

THE
INDIAN RAILWAYS ACT
IX OF 1890.

(As Modified Up to Date).



PUBLISHED

BY

DAYABHAI JATRAM MEHTA,
AND
POPATLAL AMTHASA SHAH,
PLEADERS, AHMEDABAD



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PREFACE TO THE SECOND EDITION.

Thanks to the support accorded to the first edition of our book by the legal world of this country and the different Railway Administrations we have been enabled to bring forth this second edition of the same. We have carefully revised the first edition and brought it upto date—all the decisions of Indian and English Courts published in the Law Reports—public as well as private—are duly incorporated in this edition.

We have also included in it, the *General Rules* sanctioned by the Government of India and the *Red Pamphlet Rules relating to Explosives and Dangerous goods*, passed by the Railway Conference Association which are generally not available to the general public. The additional matter has led to the increase in the size which has cost us heavily during these exceptional times. We are confident the additional matter will render this edition more popular than its predecessor. We have fully discussed the vexed question of *Railway Receipts and Documents of title*, in the light of the recent decisions of courts as well as difficulties experienced by the public in reference thereto.

We have spared no pains to enhance the usefulness of the edition and we are confident that the appreciative public will accord a suitable welcome to it.

We regret that in consequence of the increased cost in paper and printing we have been obliged to increase the price of the book, but our readers will find ample compensation for the increase in the additional matter which is introduced for the first time in a book dealing with Railway Law in this country.

AHMEDABAD

11th July 1917.

DAYABHAI I. MEHTA.

POPATLAL A. SHAH.

PREFACE TO THE FIRST EDITION.

A book on the Law of Railways in India needs hardly any introduction. The country is covered with railways all over and thousands of persons have dealings with them of some sort or other. These should know their rights and duties, and the Railway Administrations should know theirs, and it is no easy thing for either to gather them from the large mass of literature on the subject. Resolutions, Rules and Orders are issued almost daily and bye-laws are framed as occasions arise. The Courts are often called upon to decide questions affecting the rights and liabilities of the Railway Administrations as well as the general public, and the Law Reports of the various High Courts are replete with such cases. The Indian Law is based principally on the English law of Carriers and the various statutes on Railways, &c. A busy practitioner or a hard-worked railway official or a member of the general public would find it extremely difficult to find out the particular authorities for particular points. To such busy people, a volume containing all these matters arranged concisely under proper headings cannot but be useful. The busy railway official will find in this volume all that he will require for his every day work, the busy practitioner will find all cases,—English and American, as well as Indian bearing upon the law of Railways and the general public will find what is needful for them. Any one wishing to compare the provisions of English Law with those of the Indian Law of Railways will also find side by side in the sections sufficient to satisfy his curiosity.

Acts more akin and pertaining to the law of Railways in India are, for the sake of reference, given in Appendix D, printed at the end of the Act.

One of the authors has been connected with one of the biggest railways in India the B. B. & C. I. Railway for the greater part of his life and his acquaintance with and knowledge of the working of the administration of that company has considerably facilitated the compilation of this publication.

The authors have spared no pains in the preparation of this work. The list of the works consulted will be very long but the authors will be failing in their sense of obligation if they did not mention here the few of the many authors from whom they have received help. To these the authors offer their heartfelt thanks.

The works that the authors have principally consulted in the preparation of this work are the following:—

Macnamara's Law of Carriers by Land, Disney's Law of Carriage by Railway, Parson on law of liability to Passengers, Messrs, Russell and Bayley on the Indian Railways Act, Wyatt on bailment and negligence, Ratanlal on Tort, Pollock

on Tort, Underhill on Tort, Pollock on Contract, Sohoni's Criminal Procedure, Mews digest, Campbell's Ruling Cases, &c. Cases reported in Indian Law Reports, Cal. W. N., Cal. L. J., Bom. L. R., The Lawyer, Madras Law Journal and English Law Reports, Punjab Record, Kathiawar L. R. and all other reports that were available to the authors up to 1st October 1910 have been noted.

The authors found a number of useful English cases bearing upon the law of Railways, but which could not be noted under any particular sections of the Act. These are all therefore collected in Appendix E; App. D, contains Acts bearing on matters pertaining to Railways, and App. C, contains the Risk Notes, &c, with latest alterations.

The authors thank Mr. J. V. Dessai, Bar-at Law, of Ahmedabad, for going through the manuscript of this work and also for his many valuable suggestions in the course of the compilation.

The authors crave the indulgence of the reader for any inaccuracies that may have inadvertently crept in.

AHMEDABAD.

15th October 1910.

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DAYABHAI I. MEHTA.

POPATLAL A. SHAH

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LIST OF ABBREVIATIONS.



A. C.Appeal Cases Law Reports.
A. E.Adolphus and Ellis Reports K. B.
Agra H. Ct.	...	...	...North Western Provinces, High Court Reports, Agra.
A. I. R.	...	...	...All India Reporter.
Aleyn	...	...	...Aleyn's Select Cases.
Allen	...	...	...Allen's Reports.
All	...	...	...Indian Law Reports, Allahabad Series.
A. L. J.	...	...	...Allahabad Law Journal.
A. L. J. R.	...	...	...Allahabad Law Journal Reports.
A. W. N.	...	...	...Allahabad Weekly Notes.
Am. R.	...	...	...American Reports.
Angell	...	...	...Angell on Law of Carriers.
App. Cas.	...	...	...Law Reports, Appeal Cases.
Asp.	...	...	.. Maritime Law Cases by Aspinall.
Bal Code.	...	...	...Baluchistan Code.
B. & A.	...	...	..Barnewall and Alderson's Reports, K. B.
B. & Ad.	...	...	...Barnewall and Adolphus Reports, K. B.
B. & C.	...	...	...Barnewall and Cresswells Reports, K. B.
Beav	...	...	...Beaven's Reports Rolls Court.
B. L. R.	...	...	...Bengal Law Reports.
B. & S.	...	...	...Best and Smith's Reports, Q. B.
Bing	...	...	...Bingham's Reports C. P.
Bing N. C.	...	...	...Bingham's new cases.
Black H.	...	...	...Henry Blackstone's Reports.
Bom.	...	...	...Indian Law Reports, Bombay Series.
Bom. Cr. R.	...	...	...Criminal Rulings of the Bombay High Court.
Bom. H. Ct.	...	...	...Bombay High Court's Reports.
Bom. L. R.	...	...	...Bombay Law Reporter.
Bom. L. R. Code	...	...	...Bombay Land Revenue Code.
B. & H.	...	...	...Bosanquet and Puller's Reports, C. P.
Br. & L.	...	...	...Browning and Lushington's Reports Adm.
Bull N. P.	...	...	...Buller's Nisi Prius.
Bur. Code	...	...	...Burma Code.
Burr.	...	...	..Burrow's Reports K. B.
C. A.	...	...	...Court of Appeal Cases.
Cab. & E.	...	...	...Cababe and Ellis' Reports N. P.
Cal.	...	...	...Indian Law Reports, Calcutta series.
Cal. L. J.	...	...	...Calcutta Law Journal.
C. W. N.	...	...	...Calcutta weekly Notes.
Camp.	...	...	...Campbell's Reports.

C. & K. }		...Carrington and Kirwan's Reports, N. P.
Car & K. }	...	...Carrington and Marsham's Reports, N. P.
Car. & M. ...	...	...Carrington and Payne's Reports, N. P.
Car. & P. ...	...	...Common Bench Reports.
C. B. ...	...	...Common Bench Reports, New Series.
C. B. (N. S.) ...	...	...Common Law Reports.
C. L. R. ...	...	...Cox Criminal Cases.
Cox. C. C. ...	...	...Crompton and Jervis' Reports Ex.
C. & J. ...	...	...Crompton and Meeson's Reports Ex.
Cr. & M. ...	...	...Law Reports, Chancery.
Ch. ...	...	...Law Reports, Chancery Division.
Ch. D. ...	...	...Law Reports, Common Pleas Division.
C. P. D. ...	...	...Central Provinces Law Reports.
C. P. L. R. ...	...	...Coaching Tariff.
C. T. ...	...	...Darlington's Railway Cases.
Darlington ...	...	...Davison and Merivales Reports, K. B.
D. & M. ...	...	...Dearsley and Bell's Reports C. C.
D. & B. ...	...	...De Gex, Fisher and Jones Reports Chy.
De. G. F. & J. ...	...	...De Gex and Smale's Reports, Vice Ch.
D. & S. ...	...	...Dowling's Reports.
Dowl ...	...	...Dowling and Ryland's Reports K. B.
D. & R. ...	...	...East's Reports K. B.
East ...	...	...Ellis and Blackburn's Reports, K. B.
E. & B. ...	...	...Ellis, Blackburn and Ellis' Reports, K. B.
E. B. & E. ...	...	...Ellis and Ellis' Reports, K. B.
El. & El. ...	...	...Espinasse's Reports N. P.
Esp. ...	...	...Exchequer Reports.
Ex. ...	...	...Law Reports, Exchequer Division.
Ex. D. ...	...	...Equity Reports.
Eq. R. ...	...	...Fraser's Reports.
F. ...	...	...Foster and Finlason's Reports, N. P.
F. & F. ...	...	...Gow's Nisi Prius Cases.
Gow ...	...	...Gale and Davison's Reports, K. B.
G. & D. ...	...	...General Rules for Railway.
G. R. R. ...	...	...Henry Blackstone's Reports, C. P.
H. and Bal. ...	...	...Hurlestone and Coltman's Reports.
H. & C. ...	...	...Clarke and Finnelly's House of Lords Cases, N. S.
H. L. }		
H. L. Cas }	...	...Hurlestone and Norman's Reports, Ex.
H. and N. ...	...	...Harrison and Rutherford's Reports, C. P.
H. and R. ...	...	...Indian appeals.
I. A. ...	...	...Indian cases.
Ind Cas. ..	...	...Indian Railway Cases.
Ind. Ry. Cas. ...	...	...Irish Reports.
Ir. R. ...	...	...Irish Reports, Common Law.
Ir. R. C. L. ...	...	...Decisions in Court of Chancery Scotland.
Irvine ...	...	...Jurist Reports.
Jur R. ...	...

Jur. R. (N. S.)	...	...	Jurist Reports, New-Series.
K. B.	...	...	King's Bench.
K. L. R.	...	...	Kathiawar Law Reports.
Lahore	} ...	...	Indian Law Reports, Lahore series.
L. B. R.	...	...	Lower Burma Reports.
L. J.	...	...	Law Journal Report.
L. J. Adm.	...	...	" Admiralty.
L. J. Ch.	...	...	" Chancery.
L. J. C. P.	...	...	" Common Pleas.
L. J. Ex.	...	...	" Exchequer.
L. J. Eq.	...	...	" Equity.
L. J. K. B.	...	...	" King's Bench.
L. J. M. C.	...	...	" Magisterial Cases.
L. J. Q. B.	...	...	" Queen's Bench.
L. R. Adm.	...	...	Law Reports Admiralty.
L. R. C. P.	...	...	" Common Pleas.
L. R. C. P. D.	...	...	" Common Pleas Division.
L. R. Ch.	...	...	" Chancery.
L. R. Ex.	...	...	" Exchequer.
L. R. H. L.	...	...	" House of Lords.
L. R. Ir.	...	...	Irish Law Reports.
L. R. P. C.	...	...	Law Reports Privy Council.
L. R. K. B.	...	...	" King's Bench.
L. R. K. B. D.	...	...	" King's Bench Division.
L. T.	...	...	Law Times.
Ld. Raym.	...	...	Lord Raymond's Reports.
Mad.	...	...	Indian Law Reports, Madras Series.
Mad. H. Ct.	...	...	Madras High Court's Reports.
Mad. L. J.	...	...	Madras Law Journal.
Mad. L. T.	...	...	Madras Law Times.
M. & Rob.	...	...	Maclean and Robinson's House of Lords' cases.
Macq. H. L.	...	...	Macqueen's Reports, House of Lords.
M. and G.	}	...	Maning and Grangers' Reports, C. P.
M. and Gr.		...	
M. and M.	...	...	Moody and Malkin's Reports N. P.
M. and S.	...	...	Maule and Selwyn's Reports. K. B.
Mass.	...	...	Masachuettes Reports.
M. and W.	...	...	Meeson and Welsby's Reports Exch.
Moo. and P.	...	...	Moore and Payne's Reports.
Moore. I. A.	...	...	Moore's Indian Appeals.
Moore. P. C. (N. S.)	...	...	Moore's Privy Council (New Series).
N. L. R.	...	...	Nagpur Law Reports.
N. and M.	}	...	Neville and Manning's Reports.
Nev. and Man.		...	
N. P.	...	...	Neville and Perry's Reports. K. B.
N. R.	...	...	New Reports (Bosanquet and Puller's Reports).
N. W. P.	...	...	North Western Provinces, High Court Reports, Allahabad

N. Y.	...	...	...New York Report.
P. and D.	...	...	...Perry and Devison's Reports. K. B.
P. J.	...	...	...Printed Judgment of the Bombay High Court.
P. J. L. B.	...	...	...Printed Judgment Lower Burma.
Patna	...	...	...Indian Law Reports, Patna series.
Peake N. P. C.	...	...	...Peake Nisi Prius Cases.
Ph.	...	...	...Phillip's Reports.
Price.	...	...	...Price Reports, Exchequer.
Punj. C. C.	...	...	...Punjab Chief Court Cases.
P. L. R.	...	...	...Punjab Law Reports.
P. R.	...	...	...Punjab Record.
P. W. R.	}	...	...Punjab Weekly Reporter.
Punj. W. R.			
Q. B.	...	...	...Queen's Bench.
Q. B. D.	...	...	...Queen's Bench Division.
R.	...	...	...The Reportes.
Rail. Cas.	}	...	...Railway Cases.
Railw. Cas.			
Ry. & Ca. Tr. Cas.			...Railway and Canal Traffic Cases; Reports of cases before the Railway Commission by Nevill and Macnamara.
Russ. and M.	...	...	...Russell and Mylne's Reports. Chy.
R. R.	...	...	...Revised Reports.
Rat. Un. Cr. C.	...	...	...Ratanlal's unreported criminal cases.
Ry. and M.	...	...	...Ryan and Moody's Reports.
Scott (N. R.)	...	...	...Scott's New Reports. C. P.
Sess-Ca.	...	...	...Session cases Scotland.
Selw. N. P.	...	...	...Selwyn's Nisi Prius.
Show	...	...	...Shower's Reports.
S. L. R.	...	...	...Sind Law Reports.
Stark	...	...	...Starkies Reports. N. P.
Suth. W. R.	...	...	...Sutherland Weekly Reporter.
Str.	...	...	...Strange's Reports, K. B.
T. L. R.	}	...	...Times Law Reports.
Times L. R.			
T. R.	...	...	...Term Reports.
Taunt.	...	...	...Taunton's Reports, C. P.
Tex.	...	...	...Texas (Court of Appeal) Reports.
Tyr.	...	...	...Tyrwhitt's Reports, Exch.
U. B. R.	...	...	.. Upper Burma Reports.
Vent.	...	...	...Ventris' Reports K. B.
Virg.	...	...	...Virginia Reports,
W. B. R.	...	...	...Sir William Blackstone's Reports, K. B.
Wallace.	...	...	...Wallace Supreme Court of N. S.
W. N.	...	...	...Weekly Notes.
W. R.	...	...	...Weekly Reporter.
W. R.	...	...	...Weir's Cases.
Wils.	...	...	...Wilson's Reports, K. B.



ADDENDA.

S. 59.

Dangerous goods:—A consignor who tenders to carriers for carriage goods apparently harmless, but in fact dangerous, whether the carriers are common carriers bound by the custom of the realm to carry goods, provided they are safe and fit for carriage or whether they are a railway company bound by statute to afford reasonable facilities for the receiving, forwarding and delivering of goods, must give warning of the danger; otherwise he impliedly warrants that the goods are safe and fit for carriage. *Great Northern Ry. Co. v. L. E. P. Transport & Depositary Ltd.* (1922) 2 K. B. 742 C. A. (*Brass v. Maitland* 6 E. & B. 470 and *Bamfield v. Goole Transport* (1910) 2 K. B. 94 followed).

S. 66.

Keeping gate open is invitation to cross the line:—If a person wishes to use the level crossing were, merely because he found the gate unlocked, to omit to look and see whether the way was clear, when there was nothing to prevent him from doing so, and were to walk on, reading a newspaper, he could not make the company liable if he were run down by a train that he could easily have seen or heard. The Railway Company by leaving the wicket gate unlocked might be taken to have tacitly invited him to cross the line, but they do not invite him to leave his common sense behind him. If the gate remained unlocked all the time, he as a reasonable man ought to have noticed that there was no tacit invitation but if the practice of the company were to keep the gate locked when the trains are approaching and unlocked only when it was safe to cross the line, and if through the negligence of the company's servants the gate has remained unlocked when the train was approaching gives the plaintiff an invitation to cross the line, and he, acting upon that invitation crosses the line and is injured, the company is liable. *Mercer v. S. E. & Chatham Ry. Co.* (1922) 2 K. B. 549 (*Indermaur v. Dames* L. R. 2 C. P. 311 followed).

S. 72

Station Master retaining goods—liability of railway.—Where the Station Master never definitely directed the plaintiff to remove the goods, and never definitely told the plaintiff in unmistakable terms that the goods were being kept on the railway premises at his own risk, and also never definitely accepted the goods at railway risk, Held: his conduct in retaining the goods in the railway shed affords evidence that he accepted the bailment of the goods on behalf of the railway Co. and S. 72 of the Railways Act came into operation and the Railway Co. was responsible for their safe custody.

The Station Master was clearly the agent of the Company.

A letter containing a clear request to book the goods, has the effect of a

forwarding note, *Munna Lal v. E. I. Ry. Co.* (1923) A. I. R. (Allahabad) 71 (unreported).

Theft in a running train-Risk Note B.—Although it might be said that in equity, the railway company ought to give such information to their customers as is in their possession with regard to the loss of goods delivered to them, it was not incumbent under the law upon them to do so, and they were not obliged to go out of their way to assist a plaintiff in proving wilful neglect.

In India, the railway Co. when sued for loss of consignment should produce before the Court for examination those of their servants who were in a position to be acquainted with the fact relating to the disappearance of their customers' goods.

When the railway company had so adduced evidence, their long continued failure to give any explanation as to what had happened to the articles delivered coupled with the want of explanation to account for the delay, did not necessarily lead to the conclusion that the short delivery was due to wilful misconduct of the Company's servants. *G. I. P. Ry. v. Himatlal* (1923) 25 Bom. L. R. 350. (*H. C. Smith Ltd. v. G. W. Ry. Co.* (1922) 1 A. C. 178 followad).

Loss, meaning of:—In sec. 72 and the following sections of the Railways Act, as also in the Risk-Note Form B. which is one of the forms drawn up under the provisions of the Act, the word "loss" means "loss to the Railway" and cannot mean "loss to the owner" in the sense of injury to him arising out of his being deprived of his goods. *Secy of State for India. v. Jivan & Abdullah* (1923) 71 Ind. Cas. 609; (1923) 21 All. L. J. 220 (*Changalal v. Bengal & N. W. Ry. Co.* 6 P. R. 1897 referred to).

Deterioration is no loss:—it does not afford any cause of action even when Risk Note B. is held:—Under the terms of Risk Note B, the railway company would only be responsible, in the event of loss of the consignment or one or more complete packages forming part of the consignment due to the wilful neglect of the Railway Administration &c. but if the plaintiff sues for compensation not for loss, but for deterioration of the goods, even though the deterioration may have been due to the wilful neglect of the company or some other company working in connection therewith would afford him no cause of action against the company as the Risk Note holds it liable only for loss. Certainly it does not seem desirable that the company should be able to contract itself out of liability for a gross & flagrant error of despatching goods to a place different from the one contracted. *Ram Kishun Ram v. N. W. Railway & Anr.* (1922) 20 A. L. J. R. 973; (1923) A. I. R. (Allahabad) 122 (2).

Where goods, which were covered by a Risk Note B. deteriorated while in possession of the railway, held that although the deterioration was due to the neglect of the Railway's servants, the contract of indemnity contained in the Risk Note excluded all claims on account of the deterioration. *Secy of State v. Jivan & Abdullah* (1923) 21 All. L. J. 220.

Robbery means theft:—The word "*robbery*" as used in Risk-Note Form B is really synonymous with theft, and is not used there in the sense as defined by the Penal Code. *G. I. P. Ry. v. Bhola Nath Devidas* (1923) A. I. R. (Allahabad) 79 (1) (unreported).

Goods covered by Risk Note X but not excepted ones:—If the article in respect of which the Risk Note X was given by consignor was not one of the excepted articles mentioned in Sch. II of the Railways Act, held that the mere giving of the Risk Note would not exonerate the railway company from loss. *Kidar Nath v. E. I. Ry.* (1923) 21 All. L. J. 351.

Protection words must be in clear and unambiguous language:—Where a Railway Co. seeks to protect itself from liability of the negligence of its servants by exceptions of a far reaching character, it must do so in clear and unambiguous language which will convey to persons of ordinary understanding that it is reserving to itself a freedom from liability, save in the particular cases indicated, for anything that may happen to the goods entrusted to it to be carried to any named destination. *London & N. W. Ry. Co. v. Neilson* (1922) 2 A. C. 263.

Onus on plff when:—A bill of lading for rice bags shipped stated that 582 bags of rice were represented to have been shipped and that the weight, contents and value were unknown. In a suit by the consignee for damages for alleged short delivery, Held that the onus was on the plff to prove the actual quantity of rice shipped and that the bill of lading was not even *prima-facie* evidence of the quantity of rice shipped. *C. Padmanabha Iyengar & Anr* (1923) 44. Mad. L. J. p. 5.

Limitation, suit for damages for short delivery:—A short delivery of goods is equivalent to loss of the portion undelivered. Therefore a suit against a railway Co. for damages for short delivery is governed by Art 30 of sch. I to the Limitation Act, and time begins to run from the date when the short delivery was made. *Rameshwar Das v. E. I. Ry.* (1923) 71 Ind. Cas. 565; (*G. I. P. Ry. v. Wills* (1917) A. C. 148 followed and *Radha Sham Basak v. Secy. of State* 44 Cal. 16; 20 Cal. W. N. 790; 34 Ind. Cas. 130 distinguished).

S. 77

Notice to a subordinate of the Agent not good:—Notice to a Subordinate of the Agent of a Railway Co. *e. g.* the General Traffic Manager, is not the notice contemplated by Sec. 77 of the Railways Act, unless it is established that the Agent has invested him with the authority to receive service on his account. (Lahore H. Ct.) *Agent B. B. & C. I. Ry. v. Manoharlal* (1923) 71 Ind. Cas. 459. (*G. I. P. Ry. v. Chandra Bai* 28 All. 552; *G. I. P. Ry. v. Dewsey* 31 Bom. 534; *Nadirchand v. Wood* 35 Cal. 194; *Mani Conda In Re* 36 Mad. 65 cited.)

Notice of suit sent to a subordinate official of the Railway who had been appointed to dispose of claims was not a sufficient notice within the meaning of Sec. 77 of the Railways Act. *Cawnpore Cotton Mills Co. Ltd. v. G. I. P. Ry.* (1923) 21 All. L. J. 223; See also. *Agent B. B. & C. I. Ry. v. Manoharlal* (1923) 71 Ind. Cas. 459.

Deduction of period of notice—Suit against several railways including State Railway:—In a suit against several railways including a State Railway, the plff is entitled, under Sec. 15 (2) of the Limitation Act, to deduct from the period of limitation of the suit, the period of two months prescribed by Sec. 80 of the Civ. Pro. Code or the period of notice given to the Railway Companies under Sec. 77 of the Railways Act whichever is beneficial in saving the bar of limitation.

In a single suit which is properly brought against several defendants, if the plff is entitled to deduct a certain period from the period of limitation in respect of one defendant, he is also entitled to the same period of limitation in the case of other defendants, whether they are necessary parties or not. *B. & N. W. Ry. Co. v. Ramsaruphal Chandhury* (1923) 70 Ind. Cas. 109.

S. 80

Jurisdiction:—Where X had distinct and separate causes of action against A & B and the cause of action against A arose within and that against B outside, the Jurisdiction of the Court and X brought a suit against A & B claiming relief against both, Held that joinder of A & B as defts in one suit in the circumstances stated is not contemplated by Ord I. R. 3 of the Civ. Pro. Code, and that the cause of action against B having arisen outside Jurisdiction, the Court was not competent to try the suit as against him on the ground that it was competent to try the suit as against A. *B. & N. W. Ry. Co. v. Sadaram* (1923) 27 Cal. W. N. 82-83.

S. 120

Removal from carriage whether justified:—Travelling without a ticket is not one of the circumstances mentioned in S. 120 of the Railways Act as justifying the removal of a person from a railway carriage by a railway servant where there is no evidence that the persons were travelling without tickets with fraudulent intent. *Radha Kishan v. Emp.* (1922) 68 Ind. Cas. 846; (1923) A. I. R. (Lahore) 71 (1).

S. 121

Abuse or insult whether obstruction in discharge of duties:—Abuse or insult does not necessarily constitute obstruction or impediment to a railway servant in the discharge of his duties. *Radha Kishan v. Emp.* (1922) 68 Ind. Cas. 846 (1923) A. L. R. (Lahore) 71 (1).

S. 126

Offence:—The definition of "offence" in S. 149. I. P. C. does not include offences under special acts. *Aydrass & Anr. v. Emp.* (1923) A. I. R. (Mad.)

S. 128, 131

A master is liable for the wrongful act of his servant, where the servant acting in a matter which is within the scope of his authority, that is, within the course of his employment commits a wrong by exceeding the authority vested in him. The act itself which constitutes the wrong may be in excess of the servants' authority, but if in thus transgressing his authority the servant is doing in the master's interests one of the class of acts which the master has employed him to do, there the master is liable, *Girjashanker v. B. B. & C. I. Ry.* 45 Ind. Cas. 715; 20 Bom. L. R. 126.

S. 140

S. 140 is not exhaustive:—Section 140 of the Railways Act is not exhaustive, and if it can be established that as a matter of fact the Agent of a Railway Co. has received notice of a claim against the Company in a way not mentioned by that section, such notice is sufficient for the purposes of s. 77 of the Railways Act. *Agent B. B. & C. I. Ry. v. Manoharlal* (1923) 71 Ind. Cas. 459; see also *Mahadev v. S. I. Ry. Co.* (1922) 42 Mad. L. J. 202. Wherein it has been held that the word "may" does not mean "must" but a contrary view has been taken by the Allahabad High Court in *Cownpore Cotton Mills Co. v. G. I. P. Ry.* Wherein it has held that the language of Sec. 140 is imperative and the word "may" in the section must be read as *must*. The meaning of the section is that where any notice &c. has to be served on a Railway Administration that service must be made in one or other of the ways referred to in clauses (a), (b), and (c) of the section. (1923) 71 Ind. Cas. 614; (1923) 21 All. L. J. 223.

Provident fund:—The rules regulating the General Provident Fund do not apply to the State Railway Provident Institution which is governed by rules contained in the State Railway Open Line Code Vol. II. App. 1.

No distinction exists between the deposits made by the depositor himself on the one hand and the contributions in respect of those deposits and the interest or increment accrued on them on the other. *Secy of State v. Raj Kumar Mukerjee* (1293) 27 Cal. W. N. 472.

Suit against Agent:—A suit against an Agent of a Railway Co. is merely a misdescription. *Saraspur Manufg. Co. v. B. B. & C. I. Ry.* (1923—April Bom. H. Ct.)



ACT No. IX of 1890.

[21st March, 1890.]

An Act to consolidate, amend and add to the law relating to Railways in India,

[as modified up to date].

WHEREAS it is expedient to consolidate, amend and add to the law relating to railways in India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Indian Railways Act, 1890,

Title, extent and commencement.

(2) It extends to the whole of British India, inclusive

* * * * * (in so far as it has been or
XI of 1887. may be extended under the provisions of the Sindh-Pishin Railway Act. 1887), of British Baluchistan, and applies also to all subjects of His Majesty within the dominions of Princes and States in India in alliance with His Majesty, and to all Native subjects of His Majesty, without and beyond British India and those dominions; and

(3) It shall come into force on the first day of May, 1890.

Objects & Reasons:—For Statement of objects and reasons, see Gazette of India, 1888 Pt. V. p. 133; for Report of the Select Committee, see *ibid*, 1890, Pt. V, p. 23, and for debates in Council, see *ibid*, 1888, Pt. VI, pp. 124 & 137, and *ibid*, 1890, pt. VI, pp. 13 and 48.

Preamble:—In construing an Act, where the intention of the Legislature is declared by the preamble, the Court will give effect to the preamble to this extent viz: that it shows the intention of the legislature, and if the words of the enactment have a meaning which does not go beyond that preamble or which may come up to the preamble, in either case the court will prefer that meaning to one showing an intention of the legislature, which would not answer or which would go beyond the purposes of the preamble. *Overscers of west Ham v. Hles* (1885) 8 A. C. 386. In *G. N. Ry. Co. v. G. C. Ry. Co.* (1908) 24 T. L. R. 417

It was held that a more liberal construction of a statute ought not to prevail, if it is opposed to the intention of the legislature as apparent by the statute and if the words of the section are sufficiently flexible to admit of some other construction by which that intention will be better effectuated. *Cal. Ry. Co. v. N. B. Railway Co.* (1881) 6 A. C. 114; *Countess of Rothes v. Kirkcaldy Waterworks* (1882) 7 A. C. 702; *Munc. Com. v. Munckerrji* 13 Bom. L. R. 1130.

Inquiry into object of Act:—Inquiry into the history of an Act is relevant only when the words of the enactment are ambiguous and capable of two meanings. *R. v. Bishop of London*. (1889) 24 Q. B. D. 213; 67 L. T. 167.

Title:—The title of an Act is a part of the Act and is material for the purpose of considering the scope of the Act. *Fielding vs. Mosley Corporation* (1899) 1 Ch. I. (C. A.); 67 L. J. Ch. 611; *Atty General vs. Margate Pier & Harbour Co.* (1900). 1 Ch. 749, 69 L. J. Ch. 331; 82 L. T. 448.

When reference to headings necessary:—Where the sections of a statute are arranged in order under different headings, which indicate the general object of the provisions immediately following, reference may be made to the headings to determine any ambiguity in any section ranged under the heading. *Eastern Counties & London & Blackwall Railways Co. v. Marriage* 9 H. L. C. 32; *Hammersmith Railway Company v. Brand* L. R. 4 H. L. 171; but not to restrict or override the clear meaning of a section. *Fletcher v. Birkenhead Corporation* (1907) 1 K. B. 205 (C. A.), 96 L. T. 287. Heading is no part of evidence.

Marginal Notes:—The marginal notes are not to be looked at for the purpose of construing the sections to which they are attached. *Atty General v. G. E. Railway Co.* II, Ch. D. 449 at pp. 460, 461, & 465; *Sutton v. Sutton* 22 Ch. D. 511; *Kameshar v. Bhikhan* 20 Cal. 609. *Musamat v. Ahmed* 6 Bom. L. R. 233. *Thakurain v. Rae Jagatpal*. 11 Bom. L. R. 516.

Acts of Parliament applicable to Railways in India,

(A) **General Acts:**—The following General Acts of Parliament are applicable to Railway Companies in India.

31 & 32 Vic. ch. 26; 36 & 37 Vic. ch. 43: 42 & 43 Vic. ch. 41; 46 and 47 Vic. ch. 30 and 57 & 58 Vic. ch. 12.

(B) **Special Acts:**—Most of the Railway Companies in India are incorporated by special acts of Parliament.

Special Act:—A special Act, which interferes with private rights & interests, will be construed strictly so far those rights and interests are concerned. *Hughes v. Chester & Holyhead Railway Co.* 31 L. J. ch. 97; It must be construed strictly against the company but liberally in favour of the public. *Parker v. G. G. Railway Co.* 7 Scott (N. S.) 1835.

"The Court will take every means of defeating an attempt by a private Act to affect the rights either of the Crown or of persons who have not been brought in." Per Lord Selbourne in *G. N. Picadilly & Brompton Railway Co. v. Att. General.* (1909) A. C. 1.

When General and Special Acts incorporated, provisions of Special Act to prevail:—When a general Act of Parliament is incorporated with a Special Act, and if there is any contradiction between their provisions, those of the Special Act are to prevail. *Atty. General v. G. E. Railway Co.* L. R. 7 Ch. 475.

British India:—"Shall mean all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India."—General Clauses Act X of 1897 S. 3 (7).

Sub-section 2—By this Sub-section the application of the Act is, in the exercise and in the terms of the power conferred by 28 & 29 Vict. C. 17, S. 1, and 32 & 33 Vict. C. 98, S. 1, extended beyond the limits of British India to (1) all subjects of His Majesty, British or otherwise, within the dominions of Princes and states in India in alliance with His Majesty; and (2) all native Indian subjects of His Majesty without and beyond British India and not within the dominions of the Princes and States referred to. The extent, however, to which the Act can apply to either of these clauses must be limited by the subject-matter and object of the Act; in other words, it can only apply to them, so far as circumstances admit, in connection with railways which come within the scope of the Act. The only railways which appear to be within the scope of the Act are those over which the Governor-General in Council has power and authority; such as (in addition to British Indian lines) those which exist in divers places beyond the limits of British India where by Treaty, Capitulation, Agreement, or otherwise the Governor General in Council has power and Jurisdiction. And the duties imposed, and the offences created by the Act, must be taken to relate to such railways alone. Ilbert's Government of India Edn. of 1907 p. 199 & 200).

2. (1) On and from that day the enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

Repeal.

(2) But all rules declarations and appointments made, sanctions and directions given, forms approved, powers conferred and notifications published under any of those enactments or under any enactment repealed by any of them, shall so far as they are consistent with this Act, be deemed to have been respectively made, given, approved, conferred and published under this Act.

(3) Any enactment or document referring to any of those enactments or to any enactment repealed by any of them, shall so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

(4) In this Act, unless there is something repugnant in the subject or context,—

Definitions
(1) "tramway" means a tramway constructed under the Indian Tramways Act, 1886, or any special Act relating to tramways:—

Tramway:—Act XI of 1886 being an Act to facilitate the construction and to regulate the working of Tramways received the G. G.'s assent on the 12th March 1886 and came into force at once. It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort St. George in Council, the Governor of Bombay in Council and the Lieutenant Governor of Bengal. But the Governor of Fort St. George in Council, the Governor of Bombay in Council or Lieutenant Governor of Bengal may, by notification in the Official Gazette, extend this Act to the whole or any part of the territories under his administration.

See Tramway extension to Karachi Cantonment Bom. Govt. G. Pt 1. p. 1249 (1904); Tramway extension to Matheran Bom. Govt. G. Pt. 1. p. 1034 & 1484 (1904).

Special Acts relating to tramways:—Bengal Act I of 1880 relating to tramways in the city of Calcutta; Bombay Act I of 1874 (amended by Bombay Acts III of 1886, II of 1895 and I of 1917) relating to tramways in the city of Bombay; Bombay Act II of 1886 relating to tramways in Karachi; And Act I of 1886 Lahore Tramways Act.

(2) "Ferry" includes a bridge of boats, pontoons or rafts a swing-bridge, a flying bridge and a temporary bridge, and the approaches to, and landing places of, a ferry:

(3) "Inland water" means any canal, river, lake or navigable water in British India:

(4) "railway" means a railway, or any portion of a railway for the public carriage of passengers, animals or goods, and includes.

(a) all land within the fences or other boundry-marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings or branches worked over for the purposes of, or in connection with, a railway;

(c) all stations, offices, warehouses, wharves, work-shops, manufacturing, fixed plant and machinery and other works con-

structed for the purposes of, or in connection with, a railway; and

- (d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway.

Railway:—The term “railway” includes all stations, offices, warehouses, &c. constructed for the purpose of or in connection with a railway. *The East India Railway Co. v. Lala Moti Sagar* 6 P. W. R. 251; 12 Lawyer 781; P. L. R. 116 of 1911 = 36 P. R. 1911. For matters supplemental to the definitions of “railway and railway servants” see sec. 148; also see The regulation of Railways Act, 1871 (34 and 35 Vict. C. 78) S. 2.

(5) “railway company” includes any person, whether in incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway;

Railway Company:—A Railway Company is a person carrying on business within the meaning of S. 12 of The Letters Patent and it may be sued at the place of its principal office where the directors meet and the general business of the company is transacted or the main power of the business is. *B. E. M. Rodericks v. The Secy. of State for India in Council* 40 Cal. 808; 16 Cal. W. N. 747.

Form of suit against Railway Company:—The form under which a company should be sued is given in appendix A to Civ. Pro. Code which runs as under

“The A. B. Company Limited having its registered office at “.....a suit against an agent of a railway company is therefore not a suit against a company *Sinhi Ram v. Agent E. I. Railway* (1921) 64 Ind. cas. 125;

(6) “railway administration” or “administration” in the case of a railway administered by the Government or a Native State, means the manager of the railway and includes the Government or the Native State, and, in the case of a railway administered by a railway company, means the railway company.

(3) Any enactment or document referring to any of those enactments or to any enactment repealed by any of them, shall so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

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(3) "Inland water" means any canal, river, lake or navigable water in British India:

(4) "railway" means a railway, or any portion of a railway for the public carriage of passengers, animals or goods, and includes.

(a) all land within the fences or other boundry-marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings or branches worked over for the purposes of, or in connection with, a railway;

(c) all stations, offices, warehouses, wharves, work-shops, manufacturing, fixed plant and machinery and other works con-

structed for the purposes of, or in connection with, a railway; and

- (d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway.

Railway:—The term "railway" includes all stations, offices, warehouses, &c. constructed for the purpose of or in connection with a railway. *The East India Railway Co. v. Lala Moti Sagar* 6 P. W. R. 251; 12 Lawyer 781; P. L. R. 116 of 1911 = 36 P. R. 1911. For matters supplemental to the definitions of "railway and railway servants" see sec. 148; also see The regulation of Railways Act, 1871 (34 and 35 Vict. C. 78) S. 2.

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List showing by whom the different Railways and Steamer services are worked, *i.e.*, whether by the Government, Indian State, Company, etc., with the designation of the heads of the Administration with their head quarters.

Serial Number.	Railways	By whom worked.	Head of the Administration.		
			Designation.	Head quarters	
			3	4	
1	Almadpur-Katwa ...	Messrs. McLeod and Company, Ltd.	M. A.	Calcutta	
2	Ahmedabad-Dholka ...	Bombay Baroda and Central India Ry. Co. Ltd.	A. (B.B. & C. I. Ry.)	Bombay	
3	Ahmedabad-Prantij ...	Bombay Baroda and Central India Ry. Co. Ltd.	A. (B.B. & C. I. Ry.)	Bombay	
4	Ambaji-Taranga Light	Ambaji-Taranga Light Railway Company, Ltd.	A.	Calcutta	
5	Arakan Light ...	Messrs. Martin and Company, Ltd.	M. A.	Calcutta	
6	Arrah-Sisaram Light ...	Messrs. Martin and Company, Ltd.	M. A.	Calcutta	
7	Assam-Bengal ...	Assam Bengal Railway Company, Ltd.	A.	Chittagong	
8	Bangalore-Chik-Ballapur	See under Mysore Railways.			
9	Bangalore-Nanjangud ...	See under Mysore Railways.			
10	Bankura-Damodar River	Messrs. McLeod and Company, Ltd.	M. A.	Calcutta	
11	Baraset-Basirhat Light	Messrs. Martin and Company, Ltd.	M. A.	Calcutta	
12	Barsi Light ... Western	Barsi Light Railway Company, Ltd.	A.	Kundwadi	
13	Bengal and North-Western	Bengal and North Western Ry. Co. Ltd.	A.	Gorakhpur	
14	Bengal-Doon ...	Messrs. James Finlay and Company Ltd.	M. & E. C.	Domohani	
15	Bengal Nagpur	Bengal Nagpur Railway Company, Ltd.	A.	Calcutta	
16	Bengal-Proprietary	Bengal Provincial Railway Company, Ltd.	M. & E.	Magra	
17	Bhavnagar State	Bhavnagar Durbur.	M.	Bhavnagar Para	
18	Blimori-Kala-Amba ...	Bombay, Baroda and Central India Ry. Co. Ltd.	A. (B.B. & C. I. Ry.)	Bombay	
19	Birur-Shimoga	See under Mysore Railways.			
20	Bombay, Baroda and— Central India	Bombay Baroda and Central India Railway Company Limited.	A.	Bombay	
21	Bombay Port Trust ...	Bombay Port Trust.	M.	Bombay	
22	Broach-Jambusar ...	Bombay, Baroda and Central India Ry. Co. Ltd.	A. (B.B. & C. I. Ry.)	Bombay	
23	Bukhtnagar-Bihar Light	Messrs. Martin and Company, Ltd.	M. A.	Calcutta	

24	Burdwan-Katwa	Messrs. McLeod and Company, Ltd.	M. A.	Calcutta
25	Burma	Burma Railways Company, Ltd.	A. ...	Rangoon
26	Calcutta Port Commissioners	Calcutta Port Commissioners.	C. P. C.	Calcutta
27	Central Provinces	Great Indian Peninsula Railway Company Ltd.	A. (G. I. P. Ry.)	Bombay
28	Champaner-Shivrajpur-Pani	See under Guzerat Railways.		
29	Chikjajur-Chitaldrug	See under Mysore Railways.		
30	Cooch-Belhar State	The Government of India.		
31	Cutch-State	Cutch Durbar.	A. (E. B. Ry.)	Calcutta
32	Darjeeling-Himalayan	Darjeeling Himalayan Railway Company, Ltd.	M & E. C.	Bhuji
33	Delhi-Rokhta Light	Messrs. Octavius Steel and Company, Ltd	G. M. & E. C.	Kursong
34	Dholpur-Barl	Dholpur Durbar.	M. A.	Calcutta
35	Dhond-Baranati	Great Indian peninsula Railway Company Ltd.	A. (G. I. P. Ry.)	Dholpur
36	Dhrangadra	Bombay Baroda and Central India Ry. Co. Ltd.	A. (B. B. & C. I. Ry.)	Bombay
37	Dibru-Sadiya	Assam Railways and Trading Company, Ltd.	A & G. M.	Bombay
38	Eastern-Bengal	The Government of India,	A. ...	Dibrugarh
39	East India	East Indian Railway Company, Ltd.	A. ...	Calcutta
40	Gackwar's Dabhoi	Bombay Baroda and Central India Ry. Co. Ltd	A. (B. B. & C. I. Ry.)	Bombay
41	Gackwar's Mehsana	Bombay Baroda and Central India Ry. Co Ltd.	A. (B. B. & C. I. Ry.)	Bombay
42	Godhra-Lunawada	See under Guzerat Railways.		
43	Gondal	Gondal Durbar.	M. ...	Gondal
44	Great Indian Peninsula	Great Indian Peninsula Railway Company Ltd	A. ...	Bombay
45	Guzerat—			
	Champaner-Shivrajpur-Pani			
	Godhra-Lunawada			
	Nadiad-Kapadvanj			
46	Gwalior Light	B. B. & C. I. Ry.	A. ...	Bombay
47	Hardwar-Delra	Gwalior Durbar.	M.	Gwalior
48	H. E. H. The Nizam's	The Government of India.	A. (O. & R. Ry.)	Lucknow
	Guaranteed State	H. E. H. The Nizam's Guaranteed—		
	Howrah-Amra Light	State Railway Company.	A. & C. E.	Secundrabad
49	Howrah-Sheakhala Light	Messrs. Martin and Company, Ltd.	M. A.	Calcutta
50	Howrah-Sheakhala Light	Messrs. Martin and Company, Ltd.	M. A.	Calcutta
51	Jagadhri Light	Jagadhri Light Railway Company Ltd.	M. A.	Jagadhri
52	Jamnagar	Navanagar Durbar.	M. & E. C.	Jamnagar
53	Jasvantgarh-Ladnun	Jodhpur and Bikaner Durbars.	M. (J. B. Ry.)	Jodhpur
54	Jessore-Jhenidah	Messrs. McLeod and Company Ltd.	M. A.	Calcutta

Serial Number.	Railways	By whom worked	Administration.		
			Designation.	Head quarters.	
1	2	3	4		
55	Jetalsar-Rajkot	...	M. (G. Ry.)	...	Gondal
56	Jodhpur Bikaner	...	M. ...	...	Jodhpur
57	Jorhat (Provincial)	...	M. ...	...	Jorhat
58	Junagad State	...	M. & E. C.	...	Junagad
59	Kalighat-Falta	...	M. A. ...	...	Calcutta
60	Kalka Simla	...	S. ...	...	Simla
61	Khajadiya Dhari	...	M. (G. Ry.)	...	Gondal
62	Khoolna-Bagerhat	...	A. (E. B. Ry.)	...	Calcutta
63	Kolar-District	...	...	...	...
64	Kosamba-Zankhivav	...	A. (B. B. & C. I. Ry.)	...	Bombay
65	Kulasekarapatnam Light	...	A. ...	...	Kulasekarapatnam
66	Lashio Branch	...	A. (B. Ry.)	...	Rangoon
67	Madras and Southern Mahratta	...	A. ...	...	Madras
68	Madras Port Trust	...	C. ...	...	Madras
69	Matheran Steam Tram	...	A. (G. I. P. Ry.)	...	Bombay
70	Mirpur Khas-Jhudo	...	M. (J. B. Ry.)	...	Jodhpur
71	Mirpur Khas-Khadro	...	M. (J. B. Ry.)	...	Jodhpur
72	Morvi	...	M. ...	...	Morvi
73	Mourbhaj State Light	...	A. (B. N. Ry.)	...	Calcutta
74	Mysore— Bangalore Chik-Ballapur Bangalore-Nanjangud Birur-Shimoga Chickajalur-Chitaldrug Kolar-District Mysore-Arikere Trikere-Narasimharajapura	...	A. ...	...	Mysore
		Gondal Durbar.			
		Jodhpur and Bikaner Durbars.			
		The Assam Government.			
		Junagad Durbar.			
		Messrs. McLeod and Company Ltd.			
		The Government of India.			
		Gondal Durbar.			
		The Government of India.			
		See under Mysore Railways.			
		Bombay, Baroda and Central India Ry. Co. Ltd.			
		East India Distilleries and Sugar Factories, Ltd.			
		Burma Railway Company, Ltd.			
		Madras and Southern Mahratta Ry. Co. Ltd.			
		Madras Port Trust			
		Great Indian Peninsula Railway Company, Ltd.			
		Jodhpur and Bikaner Durbars.			
		Jodhpur and Bikaner Durbars.			
		Morvi Durbar.			
		Bengal Nagpur Railway Company, Ltd.			
		Mysore Durbar.			

75	Mysore-Arsikere	See under Mysore Railways.	A. (S. I. Ry.)	Trichinopoly
76	Nadiad-Kapadvanj	See under Guzerat Railways.	A.	Lahore
77	Nilgiri	South Indian Railway Company, Ltd.	A.	Lucknow
78	North-Western	The Government of India.	A. (G. I. P. Ry.)	Bombay
79	Oudh and Rohilkhand	The Government of India.	A. (B.B. & C. I. Ry.)	Bombay
80	Pachora-Jamner	Great Indian Peninsula Railway Company Ltd.	A. (B.B. & C. I. Ry.)	Bombay
81	Palampur-Deesa	Bombay, Baroda and Central India Ry. Co. Ltd.	A. (B.B. & C. I. Ry.)	Bombay
82	Parlakimedi Light	Bengal Nagpur Railway Company, Ltd.	A. (B.B. & C. I. Ry.)	Bombay
83	Petlad-Cambay	Bombay, Baroda and Central India Ry. Co. Ltd.	A. (B.B. & C. I. Ry.)	Bombay
84	Petlad-Vaso	Bombay, Baroda and Central India Ry. Co. Ltd.	M. (J. B. Ry.)	Jodhpur
85	Pipar-Bilara Light	Jodhpur and Bikaner Durbars.	M. (G. Ry.)	Gondal
86	Porbandar State	Gondal Durbar.	A. & C. E.	Izatanagar
87	Powayan Steam Tram	Rohilkund and Kumaon Railway Company, Ltd.	A. (G. I. P. Ry.)	Bombay
88	Pulgaon-Arvi	Great Indian Peninsula Railway Co., Ltd.	A. (E. B. Ry.)	Calcutta
89	Raja Bhat Khawa-Dalsingpara	The Government of India.	A. (B.B. & C. I. Ry.)	Bombay
90	Rajpura State	Bombay, Baroda and Central India Ry. Co. Ltd.	M. (J. B. Ry.)	Jodhpur
91	Ratangarh-Sardarshahr	Jodhpur and Bikaner Durbars.	A. & C. E.	Izatanagar
92	Rohilkund and Kumaon	Rohilkund and Kumaon Railway Co. Ltd.	M. & C. E.	Delhi
93	Shahdara (Delhi) Saharan— pur Light	Messrs. Martin and Company, Ltd.	A.	Trichinopoly
94	South Indian	South Indian Railway Company, Ltd.	A. (B. Ry.)	Rangoon
95	Southern Shan State	Burma Railways Company, Ltd.	A. (B.B. & C. I. Ry.)	Bombay
96	Tapti-Valley	Bombay, Baroda and Central India Ry. Co. Ltd.	L. A.	Tezpore
97	Tarikere-Narasimharajapura	See under Mysore Railways.	M.	Udaipur
98	Tezpore-Balipara	Messrs. Kilburn and Company, Ltd.	A. (B.B. & C. I. Ry.)	Bombay
99	Udaipur-Chitgarh	Mewar Durbar.	M. A.	Calcutta
100	Vijapur-Kalol-Kadi	Bombay, Baroda and Central India Ry. Co., Ltd.	M. A.	Calcutta
101	Calcutta Steam Navigation Co.	Messrs. Hoare Miller and Company Ltd.	M. A.	Calcutta
102	Indian General Navigation— and Railway Company	Messrs. Kilburn and Company, Ltd.	M. A.	Calcutta
103	Rivers Steam Navigation Co.	Messrs. Macneill and Company, Ltd.	A	Calcutta

NOTE:—

The abbreviations shown in column 3 indicate the following:—

A. Agent. A. & C. E. Agent and Chief Engineer. A. & G. M. Agent and General Manager. C. P. C. Calcutta port Commissioners. D. A. & C. E. Deputy Agent and Chief Engineer. G. M. & E. C. General Manager and Engineer-in-Chief. L. A. Local Agents. M. Manager. M. A. Managing Agents. M. & C. E. Manager & Chief Engineer. M. & E. Manager and Engineer. M. & E. C. Manager and Engineer-in-Chief. S. Superintendent.

(7) "railway servant" means any person employed by a railway administration in connection with the service of a railway:

Railway Servant:—See Sec. 148.

(8) "Inspector" means an Inspector of Railways appointed under this Act:

(9) "goods" includes inanimate things of every kind:

Goods:—See The Railway Clauses Act, 1845 (8 & 9 Vict. C. 20) S. 3.

(10) "rolling-stock" includes locomotive engines, tenders, carriages, wagons, trucks and trollies of all kinds:

Rolling Stock:—See the Railway Rolling stock Protection Act. 1872 (35 & 36 Vict. C. 50) S. 2.

(11) "Traffic" includes rolling-stock of every description, as well as passengers, animals and goods:

Traffic:—The word "Traffic" in Sec. 42 of The Railways Act (IX of 1890) does not include a person going to the Railway station to see a friend off. *E. I. Railway Co. v. Lala Moti Sagar* 6 P. W. R. 251; 12 Lawyer 781. *Emp. v. Brijbasilal* 42 All 327; *Vishwnath v. G. I. P. Ry.* (1921) 23 Bom. L. R. 809; *Mathuridas v. secy of state* 6 S. L. R. 42, 45. See also The Railway and Canal Traffic Act. 1854 (17 & 18 Vict. c. 31) S. 1.

Animals:—In the statute 12 & 13 Vic. C. 93 S. 29 the word "animal" was thus defined.

"The word 'animal' shall be taken to mean any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog cat or any other domestic animal: And in the later statute 17 & 18 Vic. C. 60 it was laid down that the word "animal" shall in the said Act (12 & 13 Vic. C. 92) and in this Act, mean any domestic animal, whether of the kind or species particularly enumerated in clause 29 of the said Act, or of any other kind or species whatever, and whether a quadruped or not." In Bengal Act I of 1869 the word "animal" has been defined to mean any domestic or tamed quadruped or any domestic or tamed bird. Justice Ghose in *Tulsi Dewoah v. Sweeney* 24 Cal. 881. explained the word "animal" as ordinarily meaning an organised or living being

having sensation and power of voluntary motion, an inferior or irrational being as distinguished from man.

(12) "through traffic" means traffic which is carried over the railways of two or more railway administrations:

Through traffic as opposed to Local Traffic—means the traffic between two stations, both being on one of the lines over which the running powers extended *Midland Ry. v. M. S. & L. Ry.* 22 L. T. 601.

(13) "rate" includes any fare, charge or other payment for the carriage of any passenger, animal or goods:

Rate:—See the Railway Clauses Act. 1845 (8 & 9 Vict. C. 20) S. 3.

(14) "terminals" includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters, and of any services rendered thereat:

Terminal Charges:—See the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. C. 25) S. 55. "Terminal charge" means a charge for the use of goods station and for the various duties which a railway Company, as common carriers, perform in connection with the goods consigned to them for carriage. *Laljiibhai v. G. I. P. Ry.* 16 Bom. 434.

(15) "pass" means an authority given by a railway administration, or by an officer appointed by a railway administration in this behalf, and authorising the person to whom it is given to travel as a passenger on a railway gratuitously:

(16) "ticket" includes a single ticket, a return ticket and a season ticket:—

(17) "maund" means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains Troy: and

Standard weight:—On Indian Railways the following equivalents are accepted for Indian and English weights:—

100 Maunds = 3.673 tons,

1 Maund = 82.29 lbs.

27.22 Maunds = 1.0 ton,

10 Seers = 20.57 lbs.

(18) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act.

Collector:—See also the definition in S. 3 (10) of the General Clauses Act, 1897 (10 of 1897) General Acts. Vol. IV.

CHAPTER II.

INSPECTION OF RAILWAYS.

4. (1) The Governor General in Council may, appoint persons Appointment and duties of Inspectors. by name or by virtue of their office, to be Inspectors of Railways.

(2) The duties of an Inspector of Railways shall be—

- (a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the Governor General in Council as required by this Act;
- (b) to make such periodical or other inspections of any railway or of any rolling-stock used thereon as the Governor General in Council may direct;
- (c) to make inquiry under this Act into the cause of any accident on a railway;
- (d) to perform such other duties as are imposed on him by this Act, or any other enactment for the time being in force relating to railways.

This section is adapted from The Regulation of Railways Act, 1871 (34 & 35 Vict. Ch. 78) S. 3.

Appointment of Inspectors:—For persons appointed to be Inspectors of Railways under this section, see Government of India (Railway) Circular No. XV, dated 4th December 1888.

Delegation of Powers:—Before the passing of the Railway Board Act IV of 1905, the powers of the Governor General in Council were delegated to Local Government with regard to railways under their control by Notification No. 268 dated the 11th June 1890; but since the passing of the said Act IV of 1905, the powers referred to in the said Notification have been delegated to the Railway Board by Notification No. 801 Dated the 24th March 1905—See also S. 144.

Sanction of Government, a condition precedent to the opening of Railway:—See S. 18 and the Notes thereto.

Notice of intended opening of a Railway:—See S. 17.

Proceedure in sanctioning the opening of a Railway:—See S. 19.

Power to make rules regarding opening of Railway:—See S. 22.

Power to close an opened railway and reopening of closed lines:—See Ss. 23 & 24.

Accident.—See Ss. 83, 84, 85, & 96.

5. An Inspector shall, for the purpose of any of the duties which he is required or authorized to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and, subject to the control of the Governor General in Council, shall for that purpose have the following powers, namely;—

Powers of
Inspectors

XLV of 1860.

- (a) to enter upon and inspect any railway or any rolling-stock used thereon;
- (b) by an order in writing under his hand addressed to the railway administration, to require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the Railway administration;
- (c) to require production of any book or document belonging to or in the possession or control of any railway administration (except a communication between a railway company and its legal advisers) which it appears to him to be necessary to inspect.

Note:—See The Registration of railways Act, 1871 (34 & 35 Vict. C. 78), S. 4.

6. A railway administration shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act.

Facilities to be
afforded to In-
spectors.

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WORKS.

7. (1) Subject to the provisions of this Act, and, in the case of immoveable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may for the purpose of constructing a railway or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time in force:—

Authority of
railway adminis-
tration to exe-
cute all necessary
works.

- (a) make or construct in, upon, across, under or over any lands, or any streets, hills, valleys, roads, railways, or tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, [lines of railway] ways, passages, conduits, drains, piers, cuttings and fences as the railway administration thinks proper;
- (b) alter the course of any rivers, brooks, streams, or water-courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over and under them, and divert or alter, as well temporarily as permanently the course of any rivers, brooks, streams or water courses or any roads, streets or ways or raise or sink the level thereof, in order the more conveniently to carry them over or under or by the side of the railway, as the railway administration thinks proper;
- (c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;
- (d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as the railway administration thinks proper;
- (e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them, and substitute others in their stead; and
- (f) do all other acts necessary for making, maintaining, altering or repairing and using the railway.

(2) The exercise of the powers conferred on a railway administration by sub-section (1) shall be subject to the control of the Governor General in Council.

Scope of the Section-Statutory power:—This section corresponds Sec. 16 of the Railway Clauses Act 1845 (8 and 9 Vic. c. 20). It confers on railway administrations certain statutory powers; and a statutory power is a power conferred by statute to do something which could not be lawfully done without it. *Emshy v. E. Ry. Co.* (1896) 1 Ch. 418 p. 428 The effect of statutory authority to carry

any given undertaking is to relieve the Company from liability to actions for injuries resulting from the proper carrying on of the undertaking. *Ash, v. G. N. P. & Br. Ry Co.*, (1903) 67 J. p. 417; *E. London Ry. Co. v. Thames Conservancy* (1904) 20 T. L. R. 378; *Lewis & Solome v. Charing Cross, Euston Ry. Co.* (1906) 1 ch 508.

Section 16 of "The Railway Clauses Act 1845" runs thus :—

Subject to the Provisions and Restrictions in this and the Special Act &c. and any Act incorporated therewith, it shall be lawful for the Company, for the purpose of constructing the Railway, or the Accommodation Works connected therewith, hereinafter mentioned, to execute any of the following works; (that is to say :—

They may make or construct in, upon, across, under, or over any Lands, or any Streets, Hills, Valleys, Roads, Railroads, or Tram roads, Rivers, Canals, Brooks, Streams, or other Waters, within the Lands described in the said plans, or mentioned in the said Books, of Reference or any Correction thereof, such temporary or permanent Inclined Planes, Tunnels, Embankments, Aqueducts, Bridges, Roads, Ways, Passages, Conduits, Drains, Piers, Arches, Cuttings, and Fences as they think proper.

They may alter the course of any rivers not navigable, Brooks, Streams, or Watercourses and of any Branches of navigable Rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining Tunnels, Bridges, Passages, or other Works over or under the same, and divert or alter, as well temporarily as permanently, the Course of any such Rivers or Streams of Water, Roads, Streets, or Ways, or raise or sink the level of any such Rivers or Streams, Roads, Streets, or Ways, in order the more conveniently to carry the same over or under or by the side of the railway as they may think proper.

They may make Drains or Conduits into, through, or under any lands adjoining the Railway for the purpose of conveying Water from or to the Railway;

They may erect and construct such Houses, Warehouses, Offices, and other Buildings, Yards, Stations, Wharfs, Engines, Machinery, Apparatus, and other Works, and Conveniences as they think proper.

They may from time to time alter, repair or discontinue the before mentioned Works or any of them and substitute others in their stead; and

They may do all other Acts necessary for making, maintaining, altering, or repairing, and using the Railway.

Provided always, that in the exercise of the powers by this or the Special Act granted, the company shall do as little damage as can be, and shall make full satisfaction in manner herein and in the Special Act, and any act incorporated therewith, provided, to all Parties interested for all Damage by them sustained by reason of the exercise of such powers.

Railway :—By S. 148 of this Act it is enacted that for purposes of Secs. 7 to 12 (both inclusive) the word "railway" whether it occurs alone or as a prefix to another word, has reference to a railway or portion of a railway under construction and to a railway or portion or a railway not used for the public carriage of passengers, animals or goods, as well as to a railway falling within the definition of that word in Sec. 3 Cl. 4.

Discretion of railway Company in exercise of statutory powers:—A Company invested with statutory powers must exercise those statutory powers reasonably and in good faith, and if they so act, their discretion as to the mode of acting cannot be interfered with. *Westminster Corp v. L. & N. W. Ry. Co.* (1905) A. C. 426.

Delegation of powers of Governor General in council to Railway Board :—Before the passing of the Railway Board Act IV of 1905, the powers of the Governor General in Council were delegated to Local Governments with regard to railways under their control by Notf. No. 268 dated the 11th June 1890; but since the passing of the said Act IV of 1905 the powers referred to in the said Notification have been delegated to the Railway Board by Notf. No. 801 dated the 24th March 1905—see Sec. 144.

Acquisition of land.

Acquisition of land for Companies:—See S 38 to 44 of the Land Acquisition Act I of 1894.

Land absolutely vests in Government:—Land acquired under the provisions of The Land Acquisition Act vests absolutely in the Government free from all incumbrances after a bonafide award or reference by the collector has been made and possession taken, even when no special notice as required by Sec. 9 of the Act has been served on person known or believed to be interested therein. (In the matter of the petition of *Fenwick G. B. L. R. A. P. 47=14 W. R. C. R. 72* followed; *North London Railway Company v. Metro. Board of Works* 28 L. J. C. H. 909 and *Gallsway v. Mayor commonalty of London* L. R. I. H. L. 34 referred to) *Gangaram Marwadi v. The Secretary of State* 30 Cal. 576. A railway administration may be authorised by Government to construct their lines across a public street without being required for that purpose to acquire so much of the street as is occupied by the level crossing under the land Acquisition Act of 1894. *Munc. Corp. of the City of Bombay v. G. I. P. Ry.* 21 Cal. W. N. 447=19 Bom. L. R. 48=41 Bom. 291.

Where land is acquired by a Railway company under the provisions of the Land Acquisition Act with the aid of Government, all rights before existing, whether of passage or of any other kind, absolutely ceased upon the acquisition of the land for the railway; and no right of way afterwards arose, or was continued, merely because there remained no mode of access to the land

otherwise than by crossing the line. If, however the Ry. company by their representations and conduct lay themselves under legal obligation to provide a way such obligation may be enforced. *Collector of the 24 Paragnas v. Nabinchandra Ghose* 3 W. R. 27. The acquisition of land under the Land Clauses and Railway Clauses Acts in England and Land Acquisition Act in India discharges it of all easements appurtenant thereto, such as a right to a water channel, to fill a tank in a factory, a right to discharge foul water on to other lands, a right of way, and a right to light and air. *Taylor v. Collector of Purneah* 14 Cal. 423, and the remedy of the dominant owner is not by suit for disturbance of his rights, but for compensation for injurious affection. *Egale v. Charing Cross Ry. Co.* (1887) L. R. 2. C. P. 638; *Wigram v. Fryer* (1887) L. R. 36 ch. D. 87. *Barnard v. G. W. Ry.* 86 L. T. 798; *Glover v. N. Staffordshire Ry.* 16 Q. B. 912.

Company may take land for purposes of this section:—The Company may take lands over which their powers of compulsory purchase extend for the purposes of the works authorised by this section. *Rangley v. Mid. Ry. Co.*, 3 ch. 306; *Wilkinson v. Hull & Ry. & Dock Co.*, 20 ch. D. 325 but they cannot execute any such works on land of which they have not acquired the ownership and therefore they cannot divert a foot path so as to place it upon land of which they are not the owners. *Rangley v. Mid. Ry. Co.*, Supra. They could not dedicate to the public the surface of a neighbour's land without first acquiring it under the Land Clauses Act, *Rangley v. Midland Railway Co.* (1868) 3 ch. 306.

User of land-Specified purpose:—Where purchases of land are made under the compulsory powers of an Act, the purchasers on the one hand, and the vendors on the other, have a right to confine the exercise of the ownership to the specified purpose. *Bostock v. North Staffordshire Ry.* 25 L. J. Ch. 325; 2 Jur. (N. S.) 248; A railway company purchasing land for the railway acquires an absolute fee simple, but such fee simple is acquired solely for the purposes of constructing and using the railway. *Norton v. L. & N. W. Ry. Co.* 47 L. J. Ch. 859; 9 Ch. D. 623; 39 L. T. 25; affirmed in 13 Ch. D. 268; 41 L. T. 429.

Taking land in excess of powers:—Where a railway takes land in excess of its powers, if the quantity and value are small, it is doubtful if a Court would grant relief by injunction. *Dowling v. Potypool &c. Ry. Co.*, L. R. 18 eq. 714 but so far as the Indian Courts are concerned, the declaration by the Government that any land is required for any public purpose is conclusive and they will not interfere with the discretion of the Local Governments. *Ezra v. The Secy of State* 30 Cal. 36 at pp. 77 & 80; *Akshoy Kumar Ghose v. Commissioner of the Port of Calcutta* 33 Cal. 1243.

Classifications of Lands:—The following are the revised rules regarding the terms on which land for railway purposes is to be allotted and registered:—

- (1) Land required for railways is divided into four classes, A. B. C. & D.
- (2) Class A. comprises the land required for the permanent works of a railway, including the road, with its bridges &c., and all stations, workshops, permanent storehouses and the like, necessary for the line when opened, and which under the contract is to be provided by Government free of cost to the Railway Companies. The occupation of this land by a railway Company will be so far permanent that it will only cease when their contract is terminated or surrendered, and the whole lapses to Government. It is all provided free of charge.
- (3) Class B. is also provided free, and contains land essential for the execution of the permanent works of a railway, but not required after the completion of the line in part or in whole. Such is land for spoil-banks, for extra excavation to make banks for river diversion, and for the storage of railway materials held in stock by the Railway Company pending the construction of the line or their despatch to the works. The occupation of this class of land will be temporary.
- (4) Class C. contains the land which a Railway Co. has to provide at its own cost. This is land which is required for the provision or preparation of materials, for purposes contingent on the actual execution of the works on the line, or for other miscellaneous objects which the Government recognizes as falling legitimately within the scope of the Company's operations, though, not giving it a claim to obtain the land free. As a railway Co. is bound to pay for the construction of all works out of capital, receiving only from Government without charge the land on which the works stand, the provision of all materials and the means of facilitating the execution of all works are to be at the cost of the Ry Co. In all cases, however, the land in the first instance will be taken possession of by Government and handed over to the Company for occupation at a fair rental. When the necessity for occupation ceases, the land will be given up again to Government by the Co. the proper time for this being determined as under class B.
- (5) Class D. contains that land which being required in consequence of the works of a railway still does not come directly into the occupation of the Co; it is provided free of charge. It will be exclusively land for roads.

* * * * *

- (15) It will be necessary for Government to see that a correct register and record of title of all railway lands is maintained, for the whole of such lands will one day revert to the crown.

Construction of Acts:—Railway Acts are to be construed strictly against the parties obtaining them, but liberally in favour of the public. *Parker v. G. W. Ry. Co.* 13 L. J. C. P. 105; 7 Scott (N. R.) 835.

Enabling or compulsory Powers:—Acts authorising companies to make railways are regarded as but enabling statutes which give powers, but do not render compulsory the exercise of those powers. *Scottish North Eastern Ry. v. Stewart* 5 Jur. (N.S.) 607; In the absence of direct obligation, no duty to make is laid upon the company, nor is it bound to complete a railway made only as to part. *York & North Midland Ry. Co. v. Reg.* (1853) 22 L. J. Q. B. 295; *Reg. v. G. W. Ry. Co.* (1893) 62 L. J. Q. B. 572. *Darlaston v. L. & N. W. Ry. Co.* (1894) 2 Q. B. 694. It is on the ground of a general public good that the Legislature grants to railway companies the compulsory powers of taking the property of individuals, *Grey v. Liverpool & Bury Ry.* 9 Beav. 391-4 *Railway cas.* 235; *G. W. Ry. v. Metro. Ry.* 1 N. R. 557.

Accommodation Works:—Lands required by a railway company for accommodation works are lands required for the purposes of the "undertaking" or "of the Ry." Every work which a railway company is empowered to do, not merely what it is compelled to do, is a purpose of the undertaking. *Wilkinson v. Hull &c. Ry. & Dock Co.* 51 L. J. Ch. 788.

The words "accommodation works" mean works for the benefit of lands adjoining the railway; and "insufficient" means insufficient for the use of the lands in the condition in which they were when the line was made. *Rhondda & Swansea Bay Ry. v. Talbot* 66 L. J. Ch. 570; (1897) 2 Ch. 131.

Compensation for damage:—As to payment of compensation for damage caused by lawful exercise of the powers under Ss. 7, 8 and 9—see S. 10, By S. 10, a suit shall not lie to recover such compensation, but in the case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance with the provisions of various sections mentioned in S. 10 of this Act.

Effect of words "Notwithstanding anything in any other enactment for the time being in force":—The words "*Notwithstanding anything in any other enactment for the time being in force*" empower a Railway Company to do certain acts specified in the section regardless of the provisions of other enactments. *G. I. P. Ry. v. Municipal corporation of Bombay* 16 Bom. L. R. 104.

Highway:—Highway includes any public road, street, lane or other public way or communication. *Canadian Pacific Ry. Co. v. Toronto Corporation & Grand Trunk Railway Co. of Canada* P. C. (1911) A. C. 461.

Access to highway:—The owner of land fronting upon a highway, whether it is a landway or a waterway and whether tidal or not has a right of access to the highway and is entitled to compensation if his access is cut off. *Lyon v. Fishmongers' Co.* 1 App. C. 662; *Chamberlain v. West End of London &*

Crystal Palace Railway Co. 31 L. J. 201; and in the same way the right to compensation arises if by lowering or raising the highway the access is impeded. *Moore v. G. S. & W. Railway Co.* 10 Ir. C. L. 46.

Street.—Means a thoroughfare with houses on both sides, not merely a road or footway, *Galloway v. London (Mayor)* 35 L. J. Ch. 477; *L. C. & D. Ry. v. London Corporation* 19 L. T. 250.

Rivers.—Include navigable rivers as well as rivers not navigable and therefore the company is authorised to construct their railway upon the bed of the navigable part of the river provided they leave the residue unimpeded. They cannot alter or divert the entire course of such a river. *Abraham v. G. N. Ry.* 16 Q. B. 586; but see *Birmingham-Waterworks Co. v. L. & N. W. Ry. Co.* 4 L. T. 398.

The Company may take water from a river.—A Railway Company whose line crosses a stream may take a reasonable quantity of water for the supply of its engines. *Earl of Sandwich v. G. N. Ry. Co.* 10 Ch. 707; *Atty. General v. G. N. Ry. Co.* (1909) 1 Ch. 775; In the same way a railway company is not liable for diverting subterranean water by operations on its lands. *Galga v. J. S. & W. Railway Co.* 4 Ir. C. L. 456.

Arches.—Where a company has given a notice to proprietors of a manufactory which lay at each side of the railway (passing through on arches) to take land, it is competent to the land owner to apply at once for a mandamus to compel the Company to complete the purchase. *Pinchin v. London & Blackwall Ry. Co.* 24 L. J. Ch. 417; 1 Jur. (N. S.) 241; *Lind v. Isle of Wight Ferry Co.* 7 L. T. 416.

Tunnels.—The grant to a railway company of the right to make, maintain and use a tunnel does not give the company such a right to support their tunnel that the grantor, acting duly in accordance with the Railway Clauses Act, cannot work or have the benefit of mines under and adjacent to the tunnel. *L. & N. W. Ry. Co. v. Ackroyd* 31 L. J. Ch. 588.

That under the Railway and Land Clauses Acts, companies are entitled permanently to use the land for the purposes of tunnels without doing more than paying for the permanent user and occupation of the land, *Pinchin v. London & Blackwall Ry.* 24 L. J. Ch. 417, but under 8 and 9 Vic. Ch. 18 & 20 a Railway Company entering on land for constructing a permanent tunnel must purchase the land. *Ramsden v. Manc & Altrincham Ry. Co.* 5 Rail.Cas 552.

A Railway Company cannot make a tunnel under this section without first compensating the owner of the land through which the tunnel is to pass. *Ramsden vs. Manchester & Alt. Ry. Co.* Supra.

S. 7.

Railway bound to maintain bridge, not to strengthen it.—Where a public highway is carried over a railway by means of a bridge, constructed under

the provisions of s. 46 of the Railway Clauses Consolidation Act, 1845, the railway company is liable to maintain the bridge in the condition, as to the strength in relation to traffic in which it was at the date of completion but is not liable to improve and strengthen the bridge to make it sufficient to bear the ordinary traffic of the district which may reasonably be expected to pass over it according to the standard of the present day. *Atty. Gen. v. G. N. Ry.* (1916) 2 A. C. 336. (1917) 21 Cal. W. N. Page LXXV; (*Sharpness' Case* (1915) A. C. 654 followed).

Bridge:—Bridge is a building. *Lloyd v. L. C. & D. Ry.* 34 L. J. Ch. 401; 12 L. T. 363, and "Bridge" means the Bridge proper and does not include the approaches to the bridge. *Rhondda Urban Council v. Taff Vale Ry. Co.* (1909) A. C. 253.

Temporary bridges:—The Railway Company having commenced the building of the permanent bridge, erected a temporary bridge adjoining to the permanent bridge, which was used partly for building that bridge, and partly for conveying earth and materials across the river. On an application of a navigation company to restrain the erecting of a temporary bridge across the navigation, it was held that the railway company had the power of erecting such temporary bridge, the power being exercised reasonably and *bonafide*. That the temporary bridge being erected and used for a lawful purpose might also be used for other purposes, for which alone it could not have been erected. *Priestly v. Manc & Leeds Ry.* 2 Railw. Cas 134; see also *London & Birmingham Ry. Co. v. Grand Junction Canal Co.* 1 Railw. Cas. 224, and 576.

Maintaining Gate posts.—Where a railway company was, by a private Act of Parliament, authorised to maintain certain gate posts which they had built before the passing of the Act in the highway and a cabman drove against the gate post and thereby sustained damage in dark night by reason of the lights on the highway near the gate posts being dimmed by the Lightning Regulations due to war, the railway company was not liable for negligence as they were not bound to do anything positively but merely to maintain the gate posts which had been built already *G. C. Ry. Coy. v. Hewlett* (1916) 2 A. C. 511.

Easement:—There can be no easement, properly so called, unless there be both a servient and a dominant tenement. There can be no such thing according to Civil Law, what may be termed an easement in gross. An easement must be connected with a dominant tenement. In truth a public road or a high way is not an easement. It is a dedication to the public of the occupation of the surface of the land for the purpose of passing and repassing, the public generally taking upon themselves (through authorities or otherwise) the obligation of repairing it. It is quite clear that, that is a very different thing from an ordinary easement, where the occupation remains in the owner of the servient tenement subject to the easement. *Rangley v. Mid. Ry. Co.* (1868) L. R. 3 Ch. 306. *Doxey v. Payne* 2 Smith leading Cas. 6th Ed. 132. See also ill (c) to S 4 of Act V. of 1882.

Acquisition of easement:—A Company may take steps to prevent a neighbouring land-owner from acquiring an easement of light over land used as a goods yard. *Bonner v. G. W. Ry. Co.*, 24 Ch. D. 1.

Right of way over land acquired by railway:—A railway Company cannot grant, and therefore cannot dedicate to the public a perpetual right of way over and across their lines of rails or over land acquired by them for the purposes of their undertaking and which is required or intended, and would naturally come to be used for lines of rails. *Great Central Ry. Co. v. Balby with Heathorpe Urban District Council* and *Atty. Gen. v. Great Central Ry. Co.* (1912) 2 Ch. D. 110.

Land vested in Railway Co. for purposes of their undertaking—Power of company to dedicate.—The section applies only to land which was in fact acquired by the exercise of compulsory powers, and did not extend to land acquired by agreement under the provisions of the Act, and the public right of way does not extinguish over the land acquired by agreement.

Where a railway company in pursuance of the powers conferred by the Act, acquires a section of the public road for the purpose of laying across it and working lines of rails for traffic and sidings and the public rights of way over the land so acquired were legally extinguished, evidence of subsequent trespass and user by the public will not avail to establish a re-dedication to the public of a right of way over the land in question inconsistent with the user of the land by the railway company for the purpose for which they acquired it.

A Railway Co. cannot grant, and therefore cannot dedicate, to the public a perpetual right of way over and across their lines of rails or over land acquired by them for the purposes of their undertaking and which is required or intended, and would naturally come to be used, for lines of rails. *Great Central Ry. Co. v. Balby with Heathorpe Urban Dist Council* and *Atty. General v. G. C. Railway Co.* (1912) 2 Ch. D. 110; *Akshoy Kumar Ghose v. Commissioner of the Port of Calcutta* 33 Cal. 1243.

In order to constitute a valid dedication to the public of a highway by the owner of the soil, there must be an *animus dedicandi*, of which user by the public is evidence and no more. *Ibid*,

Municipality not entitled to compensation for taking of public ways under statutory powers:—The Judicial Committee have held that a Municipality in whom public ways were vested was not entitled to compensation in respect of portions of such ways taken by a Tramway Company under Statutory powers. *Municipal Council of Sydney v. Young* (1898) A. C. 457.

Whether permission of the Municipality necessary before laying the rails across a public road:—Under this section the railway company has a power to construct lines of railway across a public road without obtaining

the permission of the Municipality. *Munc. corp of Bombay v. G. I. P. Railway* 16 Bom. L. R. 104; 19 Bom. L. R. 48=41 Bom. 291.

Vesting of public streets in Municipality—How far:—The effect of S. 289 of the Bombay City Municipal Act 1888, vesting all public streets, and the pavements, stones, and other materials in the Corporation and under the control of the Commissioner, is only to vest in that body such property as is necessary for the control and maintenance of the street as a highway for public purposes. *G. I. P. Railway v. The Municipal Corporation of Bombay* 16 Bom. L. R. 104=38 Bom. 565; 19 Bom. L. R. 48=41 Bom. 291. See also *Mayor &c. of Tunbridge wells v. Eraid* (1896) A. C. 434. 442.

Laying of railway lines under statutory authorities over public streets:—The provisions of the Land Acquisition Act, 1894, do not cut down the power conferred by section 7 on a railway company to carry a line of railway across a street, subject to the control of their powers by the Governor General in Council; The latter Act in such a case contemplates the right of the public being kept alive, whereas acquisition under the Land Acquisition Act would extinguish such rights. The taking of a railway on the level across a public highway is accordingly not an acquisition of immoveable property within the meaning of s. 7. *The Munc. Corp. of the City of Bombay v. G. I. P. Ry.* (P. C.) 19 Bom. L. R. 48=21 Cal. W. N. 447=41 Bom. 291; see also *Escott v. Newport Corporation* (1904) 2 K. B. 806.

Ways:—"Ways" mean permanent ways. *Sadd v. M. W. & B. Ry.* 6 Railway cas 779; 20 L. J. Ex. 102.

Powers of diversion:—A Railway Company is only justified in diverting streams and roads as authorized by S. 16 of the Railway Clauses Act 1845 (corresponding with Cl. B. of S. 7) when such diversions are strictly necessary to enable the Company to carry out the undertaking, and therefore the right to make such a diversion cannot be insisted on, where it is only convenient or economical for the company to do so. *Pugh v. Golden Valley Ry.* 49 L. J. Ch. 721, 42 L. T. 863, *Lamb v. N. London Railway Company* 4 Ch. 522, 527, so if the road can be carried over the railway by a skew bridge without diverting the road, the company cannot divert the road in order to carry it at right angles over the line. *A. G. v. Dorset Central Railway Company.* 3 L. T. 608, but where a vertical or horizontal diversion is necessary, the Company may divert the road horizontally to a point where they are authorized to have a level crossing, if the latter diversion is more beneficial.

The power conferred on a railway by this section to divert the course of a river or road "In order the more conveniently to carry them over or under, or by the side of the railway, as the railway administration may think proper." is to be taken as cut down and qualified by the proviso (clause F) that it be **for making, maintaining, altering or repairing and using the**

the meaning of this section. *R. v. Wycombe Ry. Co.*, L. R. 2. Q. B. 310. *Fenwick v. East London Ry. Co.* L. R. 20 Eq. 544; *Pugh v. Golden Valley Ry. Co.* 48 L. J. Ch. 666; *Embsly v. N. E. Ry. Co.*; (1896) 1 Ch. 418; *L. & N. W. Ry. Co. v. Ogwen.* (1899) 80 L. T. 401.

License from the Municipal Commissioner for storing sleepers on Company's premises not necessary:—Under sub-sec. 2 to S. 7 the exclusive control of the railway administration is vested in the Governor-General in Council and if a company is exercising its statutory powers in a manner inconsistent with the health of the inhabitants of a town or the safety of the property therein, it is open to its Municipal Commissioner to make a representation to that effect to the Governor-General in Council.

The G. I. P. Ry. Co. used certain plots of land in Bombay for the purpose of storing sleepers (timber) for the use of their line without obtaining a license from the Municipal Commissioner under S. 304 (1) (d) of the Bombay Municipal Act. On an action being taken against the company it was held that no license was necessary as the storing of sleepers was necessary for the maintenance, repairing &c. of the railway line. *Municipal Commissioner of Bombay v. G. I. P. Ry. Co.* 11 Bom. L. R. 1181.

Governor General & not Municipal Commissioner has control of Railway Administration:—Under sub-section 2 of sec. 7 of the Act IX of 1890 the Gov. General in council and not the Municipal Commissioner has the control of the railway administration in the exercise of its powers under sub-section 1. *Mun. Com. of Bombay v. G. I. P. Ry.* 34 Bom. 252.

Whether works commence or not:—A Railway Co. which has constructed its line under statutory powers is not entitled to sell the rails, bridges and other materials forming its whole permanent way, although it is financially impossible for it to continue to work the undertaking. *Ellice v. Invergarry & Fort Augustus Ry. Co.* (1913) S. C. 849.

8. A railway administration may, for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas, water or compressed air or the position of any electric wire or of any drain not being a main drain:

Alteration of
pipes, wires and
drains.

Provided that—

- (a) When the railway administration desires to alter the position of any such pipe, wire or drain, it shall give reasonable notice of its intention to do so, and of the time at which it will

begin to do so, to the local authority or company having control over the pipe, wire or drain, or when the pipe, wire or drain is not under the control of a local authority or company, to the person under whose control the pipe, wire or drain is;

- (b) a local authority, company or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent, and shall make arrangements for continuing during the execution of the work the supply of gas, water, compressed air or electricity or the maintenance of the drainago, as the case may be.

Scope of the Section:—This section is adapted from s. 14 of the Act XIII of 1885 and it corresponds to S. 14 of the Railway Clauses Act, 1845 (8 & 9 Vic. c. 20) which runs as follows:—

Section 14:—It shall not be lawful for the Company to deviate from or alter the Gradients, Curves, Tunnels, or other Engineering Works described in the said Plan or Section, except within the following limits, and under the following condition; (that is to say), Subject to the above provisions in regard to altering levels, it shall be lawful for the Company to diminish the inclination or Gradients of the Railway to any extent and to increase the said inclination or Gradients as follows; (that is to say) in Gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety; and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile or to any further extent which shall be so certified by the Board of Trade as aforesaid.

It shall be lawful for the Company to diminish the Radius of any curve described in the said plan to any extent which shall leave a radius of not less than half a mile or to any further extent authorised by such Certificate as aforesaid from the Board of Trade.

It shall be lawful for the Company to make a Tunnel, not marked on the said plan or section, instead of a Cutting or a Viaduct instead of a solid Embankment, (if authorized by such certificate as aforesaid from the Board of Trade.)

It confers on railway administration certain statutory powers of altering the position of any pipe for the supply of gas, water &c. or the position of any electric wire.

For powers of railway administration respecting land see Ss. 7, 9 and from 11 to 14 both inclusive and for compensation see s. 10.

Electric wire:—It seems that the word "Electric wire" used in this section, is meant to include a telegraph wire, because by sec. 6 of the Indian Telegraph

Act XIII of 1885 the Governor-General in Council has power to establish and maintain a telegraph upon any part of the land of a railway company.

In section 3 of the said Act of 1885 the word "Telegraph" has been defined to mean "an electric, galvanic, or magnetic telegraph, and includes appliances and apparatus for transmitting or making telegraphic, telephonic, or other communications by means of electricity galvanism or magnetism."

Telegraph line:—Means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube, or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same [S. 3 (4)]

Local authority:—Means any Municipal Committee, District Board, Body of Port Commissioners, or other authority legally entitled to, or entrusted by the Government with the control or management of any Municipal or Local fund, [S. 3 (7)] and see also S. 135 (5) of Act IX of 1890 and S. 3 (28) of the General Clauses Act, 10 of 1897.

Removal of trees interrupting telegraphic communications:—S. 18 of the Indian Telegraph Act may, with advantage, be quoted here as the telegraph authority has got certain powers under it regarding the removal of trees interrupting the telegraphic communications.

If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a magistrate of the 1st and 2nd class may, on the application of the telegraphic authority cause the tree to be removed or dealt with in such other way as he deems fit. (S. 18 cl. 1.)

Awarding of compensation:—When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable and the award shall be final. (S. 18 cl. 2.)

Opposing establishment of telegraphs on railway land:—If a railway company or an officer of a Railway Company, neglects or refuses to comply with the provisions of S. 6 (Act XIII of 1885), it or he shall be punished with fine which may extend to Rs. 1000 for every day during which the neglect or refusal continues. (S. 22 of Act XIII of 1885).

Modes of service of notice by railway administration:—See s. 141 *post*.

Presumption where notice is served by post:—See s. 142 *post*.

9. (1) The Governor General in Council may authorize any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment, or other work under the control of the railway administration, to enter upon any lands

Temporary entry upon land for repairing or preventing accident.

adjoining its railway for the purpose of repairing or preventing the accident, and to do all such works as may be necessary for the purpose.

(2) In case of necessity the railway administration may enter upon the lands and do the works aforesaid without having obtained the previous sanction of the Governor General in Council, but in such a case shall, within seventy-two hours after such entry, make a report to the Governor General in Council, specifying the nature of the accident or apprehended accident, and of the works necessary to be done, and the power conferred on the railway administration by this sub-section shall cease and determine if the Governor General in Council, after considering the report, considers that the exercise of the power is not necessary for the public safety.

This Section is adapted from the Railway Regulation Act, 1842 (5 & 6 Vict. c. 55) s. 14 which runs as follows:—

14. And whereas it is essential for the public safety, and also for the proper maintenance of Railway in a state of efficiency for the public service, that Railway companies should have the power, in case of accidents or slips happening or being apprehended to their cuttings and embankments or other works, to enter upon the lands adjoining their respective Railways, for the purpose of repairing or renewing the same, and to do such works as may be 'necessary' for the purpose; be it therefore enacted, that it shall be lawful for the Lords of the said committee to empower any Railway company, in case of any accident or slip happening or being apprehended to any cutting, embankment or other work belonging to them, to enter upon any lands adjoining their Railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose: Provided always that in case of necessity it shall be lawful for any Railway company to enter upon such lands and do such works as aforesaid, without having obtained the previous sanction of the Lords of the said committee, but in every such case such Railway Company shall, within forty-eight hours after such entry; make a report to the Lords of the said committee, specifying the nature of such accident or apprehended accident and of the works necessary to be done, and such powers shall cease and determine if the Lords of the said committee, shall, after considering the said report certify that their exercise is not necessary for the public safety; Provided also that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible despatch; and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works, the amount of which compensation, in case of any dispute about the same, shall be settled in the same manner as

cases of disputed compensation are directed to be settled by the acts relating to the Railway on which such works may become necessary, Provided always, that no land shall be taken permanently by any Railway Company for such works without a certificate from the Lords of the said committee as hereinafter described.

Fall of Embankment:—When an injury is alleged to have arisen from the improper construction or maintenance of a Railway, the fact of one of its embankments giving way will amount to *Prima Facie* evidence of such insufficiency; and this evidence may become conclusive, in the absence of any proof, on the part of the company to rebut it. *G. IV. Ry. of Canada V. Braid* 1 Moor P.C. (N.S.) 101; 8 L.T. 31.

Accident:—As regards making a report of accidents see S. 83; for penalty for omitting to give notices of accident see S. 96; omission to give notice of accident by a Station Master see S. 103.

Railway could not dedicate surface of neighbour's land:—See sec. 7 at p. 17.

Delegation of powers:—See Ss. 4 and 7 pp. 12 and 13.

10. (1) A railway administration shall do as little damage as possible in the exercise of the powers conferred by any of the three last foregoing sections, and compensation shall be paid for any damage caused by the exercise thereof.

Payment of compensation for damage caused by lawful exercise of powers under section 7, 8 or 9.

(2) A suit shall not lie to recover such compensation, but in case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance, so far as may be, [with the provisions of sections 11 to 15, both inclusive, sections 18 to 34, both inclusive, and sections 53 and 54 of the Land Acquisition Act, 1894, and the provisions of sections 51 and 52 of that Act shall apply to the award of compensation.]

1 of 1894.

Sub-section 1 is adapted from S. 16 of The Railway Clauses Act, 1845 (8 & 9 Vict. ch. 20) for which see S. 7 p. 13.

Application of the Section—damage:—S. 10 can only be applicable to damage which is the result of the exercise of the powers conferred by sections 7, 8 and 9, and which can be foreseen. This section does not apply where the power exercised is the erection of an embankment and the making of a culvert, which do no injury, but where the sole cause of the injury is that the side trenches of a line are allowed to become water-courses; because this is quite unconnected with the exercise of any power conferred by section 7, and is the result of the negligence that cannot have been foreseen. *Gackwar of Baroda. v. Katcharabhai* 2 Bom. L. R. 405; 27 Bom. 314; 30 I. A. 60.

Where the damage caused was due to the insufficiency of precautions taken by the defendant, in constructing bridges and embankments in a creek for carrying a duct line, to cope with conditions which might reasonably have been anticipated, the defendant is liable. *Municipal Cor. of Bombay v. Vasudeo* 6 Bom. L. R. 899.

A Company therefore is not liable for floods, caused by reasonable means taken to protect its own property from anticipated damage by flooding. *Marby Drainage Board v. Great Northern Railway Co.*, (1912) 76 J. P. 236.

Before a person can be held liable in damages for injury caused to his neighbour's land by water either flowing from the former's land to the latter's or percolating from the one into the other, it must be shown that the water was brought or collected on his land by him voluntarily for his own purposes in a non-natural use of it, otherwise he is not liable. *Moholal v. Bai Jivkore* 28 Bom. 472; 6 Bom. L. R. 529. This case has been doubted and distinguished in *Ramamija v. Krishnaswami* 31 Mad. 169 where it is held that the retention of water by a person on a portion of his land to prevent its passing on to other portions of his land is not an act done in the natural and usual course of enjoyment and the person so doing is liable for damage caused thereby.

Where the defts with a view to make their land cultivable, lowered its level with the consequence that water in a tank belonging to a third party passed to that land and subsequently overflowed into lands belonging to the plff, it was held that the plff was not entitled to any cause of action. *Keneram v. S. Chatterjee* (1912) 16 Cal. W. N. 875.

Act taking away power of subject to sue Govt. to determine any right to land:—The Government have no power to take away by legislation, the right to proceed against them in a civil court in a case involving a right to land. *The Secy of State for India v. Moment* 40 Cal. 391; *Damodar v. Secy of state* 23 Bom. L. R. 492=45 Bom. 1161.

Damage caused by authorised Acts:—Excess of powers:—The provisions of this section as to compensation will not apply unless the damage is caused by the exercise of the powers conferred by any of the foregoing sections 7, 8 and 9. The statutory tribunal which the legislature has provided where losses are sustained in the formation of railways, is only established to give compensation for losses sustained in consequence of what railway company may do lawfully under the powers of the Act by which it is constituted. For anything done in excess of those powers, or contrary to the provisions of the Act the proper remedy is in the ordinary tribunals of the country. *Caledonian Ry. v. Colt* 3 Macq. H. L. 833; 7 Jur (N. S.) 475; 3 L. T. 252

(2) S. 68 of the Land Clauses Act, 1845 (which is analogous to this section), has reference to cases where a party is injuriously affected by reason of acts authorised to be done by a public company, in pursuance of the provisions of their act, and is inapplicable to cases where the injury complained of, may

compensated by recourse to an action for damages. *Imperial Gas, Light & Coke Co. v. Broadbent* 7 H. L. cas. 600; 29 L. J. ch. 377.

(3) The legislature having given the promoters no powers to annoy the occupiers of neighbouring property with smoke, an injury from this cause is not subject of compensation but a ground of action. A man may have a right of action where he cannot claim statutory compensation. *City of Glasgow Union Ry. v. Hunter* L. R. 2. H. L. (Sc) 78.

(4) A person who sustains an injury from the execution of works authorised by a statute is not, generally speaking, entitled to compensation under the compensation clauses of the statute, unless the injury sustained is such as, had the works not been authorised by the statute would have given the claimant a right of action. *New river Co. v. Johnson* 29 L. J. M. C. 93; 6 Jur (N. S.) 374; 1 L. T. 295.

Statutory powers are to be exercised with care and skill.—Statutory powers under this Act are to be exercised with ordinary care and skill, and with some regard to the property and rights of others; they are granted on the condition, sometimes expressed and sometimes understood, expressed in the Railways Act of 1890, but if not expressed always understood,—that the undertakers “shall do as little damage as possible in the exercise of their statutory powers.” (*Lawrence v. G. N. Ry. Co.* 16 Q. B. 643; *Bagnall v. London & N. W. Ry. Co.* 7 H. & L. 423; *Rickett v. Metropolitan Ry. Co.* L. R. 2 E. & I. App. 175; *Geddis v. Proprietors of the Bann Reservoir* 3 A. C. 430 referred to) *The Garkwar of Baroda v. Katchabhai* 27 Bom. 344.

Special mode of compensation provided.—If in execution of works authorised by an act, damage is sustained and the act provides a special mode in which compensation for such damage may be recovered, no action will lie for it, provided the works have been carefully and skilfully executed *Clothier v. Webster* 12 C. B. (N. S.) 790.

Obstruction or Inconvenience—Particular use.—To entitle a claimant to compensation he must shew that (1) he has sustained a particular damage from the execution by the company of the works authorised by the special act, and that the damage is one for which he might have maintained an action if the work had not been authorised by Parliament; (2) and also, that the injury of which he complains is an injury to his estate and not a mere obstruction or an inconvenience to him personally or to his trade, although it might have been the subject of an action if the works which occasioned it, had not been executed under the sanction of Parliament.

(2) The damage must be one which is sustained in respect of the property itself, and not in respect of any particular use to which it may from time to time be put. *Beckett v. Mid. Ry. Co.* 37 L. J. C. P. 11; 17 L. T. 499; *Caledonian Ry. Co. v. Ogilby* 2 Macq. H. L. 229.

(3) One who sustains a private and a particular injury from the diversion or obstruction of a public road by the works of a railway company, which diversion or obstruction, if done without the sanction of an act of Parliament, would give a right of action, is entitled to compensation. *Wood v. Stourbridge Ry.* 16 C. B. (N. S.) 222.

No suit lies for obstructing a public road unless there is a special damage:—A suit will not lie for obstructing a public road without showing any particular inconvenience to the plaintiff in consequence of such obstruction. *Baroda Prasad v. Gorachand* 12 W. R. 160; *Satku v. Ibrahim* 2 Bom. 457; *Chunilal v. Ramkrishna* 15 Cal 460. *Munc. of Hubli v. Ralli Bros.* 13 Bom. L. R. 1138; 35 Bom. 492.

Suit lies for damages which could not be foreseen at the time of acquisition proceedings:—A suit will lie in the Civil Court in respect of claim for damages which could not be foreseen at the time of the acquisition proceedings. The mere construction of a railway bridge across a river whereby the profits of the ferry are reduced, does not entitle the owner to claim damages; but when lands and both banks of the river which were used as landing places for the ferry, were acquired for the purpose of a railway bridge and the access to the river and with it the exercise of the franchise was destroyed, the owner was entitled to compensation. *Rameshwar Singh v. Sec. of state for India* 34 Cal. 470, but no suit will lie for damages so caused, if they could reasonably have been foreseen at the time of the fixing of compensation. Whether such damages could reasonably have been foreseen or not is a question of fact. *B. B. & C. I. Ry. v. Tapidas* 6 B. H. C. R. 116.

Land Acquisition Act:—“With the provisions of Secs. 11 to 15, both inclusive and Secs 18 to 34, both inclusive, and 53 and 54 of the Land Acquisition Act, 1894 and the provisions of Secs 51 and 52 of that Act shall apply to the award of compensation” have been substituted for the words and figures. “With the provisions of Secs 11 to 15, both inclusive, and Secs 18 to 42, both inclusive, of the Land Acquisition Act, 1870, and the provisions of Secs 57 and 58 of that Act shall apply to the award of compensation” by the Indian Railways Act (1890) Amendment Act, 1896 (9 of 1896) S. 2.

Suit lies when Collector refuses to adjudicate:—Sub-section 2 of S. 10 of the Indian Railways Act does not bar a suit for compensation in a Civil Court when the Collector refuses to adjudicate upon the claim put forward by the owner. *Rameshwar Singh v. Sec. of State for India* 34 Cal. 470

No action can be maintained for damages if the work is executed without negligence:—Where the legislature sanctions and authorizes a Railway Company the use of a particular thing and it is used for that purpose, the sanction carries with it the consequence that if damage result from it, the company is not responsible.

“It is quite plain that if there had been no *proof of negligence*, and the injury had been the unavoidable result of the *proper exercise*, by the railway company,

the powers vested in it by law, a defendant would have been protected from any civil suit even if damage had resulted from the exercise of that power. Section 10 of the Act expressly provides that as little damage as possible should be done in the exercise of powers conferred by Section, 7, 8 and 9, and that a suit shall not lie to recover compensation, and the plaintiff's remedy would obviously be to apply to the Governor General in Council who alone are vested with control over these matters. If special or large accommodation works were needed, that relief also could be claimed only under section 11, or under section 12, but by means of an appeal to the same authority. The case is, however, altered when the act, which has caused the damage, is not the result of a proper exercise of the powers conferred, but is due to the neglect or carelessness of the Railway Company in the execution of its powers. The distinction has been well illustrated in the case of accidental fires caused by the spark. Where the damage done by the spark was not shewn to have been the result of negligence, the company was held not to be liable, the reason assigned being that, when the legislature sanctioned and authorised the use of a particular thing, and it is used for that purpose, the sanction carries with it the consequence that, if the damage result from it, the company is not responsible. *Vaughan v. The Taff Vale Ry. Co.* 5 H. N. 679, 29 L. J. Ex. 247, and *Halford v. The East Indian Ry. Co.* 14 B. L. R. 1. But where negligence is proved in the matter of a fire caused by the spark, the damage done was held to be actionable. Action lies even for authorised acts if they are done negligently. If the damage could have been prevented by the reasonable exercise of powers conferred, it was held to be a case in which action could be maintained. The decision in *Rylands v. Fletcher* L. R. 3. H. L. 330 may also be consulted with advantage on this point. Applying this principle, the defendants in this case are obviously not protected as the damage is proved to be the result of their agent's carelessness and neglect. Neither S. 10 nor 12 of the Railway Act prevents such a suit." Per Ranade J. In *Gackwar of Baroda V. Katcharabhai* 2 Bom. L. R. 357 at pp. 373 and 374; *Witliors v. North Kent Railway* 27 L. J. Ex 417; *The Madras Railway v. Zemindar of Carvelinagaram* 14 B. L. R. 209. *The Madras Ry. Co. v. Zemindar of Carvelinagaram* 6 M. H. C. R. 180; see also *Canadian Pacific Ry. Co. v. Roy.* (1902) L. R. House of Lords 220. *Evans v. M. S. & L. Ry.* 57 L. J. Ch. 153.

Before a person can be held liable in damages for injury to his neighbour's land by water either flowing from the former's land to the latter's or percolating from the one into the other, it must be shown that the water was brought or collected on his land by him voluntarily for his own purposes in a non-natural use of it; otherwise he is not able. *Moholal Maganlal v. Bai Jivhore* 6 Bom L. R. 528=28 Bom. 472; (This case is distinguished in *Rammija v. Krishnaswamy* 31 Mad 169) *Withaldas v. Munic. Com. of Bombay* 4 Bom. L. R. 915. On the other hand in *Jones v. Festiniog Co.*, it was held that a Railway Company which had not express statutory power to use locomotive engines, was liable for damages done by fire proceeding from them, though negligence on the part of the company was negatived. L. R. 3. Q. B. 732.

An action can be maintained if damage is caused by negligence:—An action lies for nuthonised acts if they are done negligently. If the damage could have been prevented by the reasonable exercise of the powers conferred an action can be maintained. *Municipality of Hubli v. Ralli Bros.* 35 Bom. 492.

Where a Railway Company allowed the rain water to flow for some four miles by the sides of their railway through gutters made up of the continuous burrow pits and then allowed it to discharge itself on to the lands of the plaintiff, the Railway Company was held not to have exercised the powers conferred by Indian Railways Act, section 7 (b) and was held liable for negligence. *Gaekwar v. Katcharabhai (Supra)*.

Company not liable for nuisance—when:—(1) *By dock or yard for reception of cattle.* A railway company, having, besides the ordinary compulsory powers of taking land, power to purchase by agreement additional lands, not exceeding 50 acres in all, in such places as should be deemed eligible for any of the certain specified purposes connected with the undertaking which it should deem requisite, *bonafide* selected and acquired additional lands and used them *without negligence* for one of the purposes authorised, to wit, as a dock or yard for the reception of cattle travelling upon the line. A nuisance was thereby caused to adjoining occupiers:—Held, that the nuisance, being a necessary consequence of the use of the lands for a purpose expressly authorized by the Act, could not be restrained by injunction. (*Rex v. Pease* 4 B. & Ad. 30; *Vaughan v. Taff Vale Ry.*, Co. 5 H. & N. 679 and *Hammersmith Ry. v. Brand* L. R. 4 H. L. 171 followed; (*Metropolitan Asylum District. v. Hill* 6 App. cas 193, distinguished) *L. B. & S. C. Ry. v. Truman* 55 L. J. Ch. 354; 11 App. Cas. 45; 54 L. T. 250. *Contra:—*The plaintiffs, the owners and occupiers of a house and premises in Howrah, sued for an injunction to restrain a nuisance caused by certain workshops, forges, and furnaces erected by the defendants, and for damages for the injury done thereby.

The defendants were a railway Company incorporated under an Act of Parliament for the purpose of making and maintaining railways in India and by an agreement (entered into under their Act of Incorporation) between them and the East India Company, they were authorised and directed to make and maintain such railway stations, offices, machinery and other works (connected with making, maintaining and working the railways) as the East India Company might deem necessary or expedient. The workshops complained of were erected in 1867 under the sanction of the Bengal Government on land purchased by the Government in 1854 for the purposes of the railway under Regulation 1 of 1824 and Act XLII of 1850 and which had been made over to the defendants.

Held, that a nuisance having been proved to exist, the defendants could not escape liability on the ground that the nuisance had been caused by them in the reasonable exercise of powers conferred upon them by the Legislature. *Raj Mohun Bose & another v. The East Indian Ry Co.* 10 B. L. R. 241, which is distinguished in 1 Cal. 95.

If the nuisance exists, it is no answer to say that the deft has done everything in his power and taken all reasonable precautions to permit its existence. *Bai Bhicaji v. Pirojshaw* (1915) 17 Bom. L. R. 1040.

In the absence of statutory provisions, no general considerations of mere policy or abstract public rights, can be allowed to prevail against what the law recognises, and always has recognised as the legal rights of the individuals.

A company may be indicted for a public nuisance in respect of acts not authorised. *R. v. G. N. of England Ry.* 9 Q. B. 315;

(2) *By Vibrations*:—Actual injury to premises from the vibration caused by ballast trains on the railway during the construction of the works is a ground for compensation; but per Lord Campbell C. J.,—not injury from that cause after the construction of the Railway. *Panny v. S. E. Ry. Co.* 26 L. J. Q. B. 225;

(3) *By noise of steam or smoke*:—Statutory compensation cannot be claimed by reason of noise or smoke, of trains whether part of the claimant's land is taken or not. *City of Glasgow Union Ry. v. Hunter* L. R. 2. H. L. (Sc) 78.

(4) *By Frightening of Horses*:—In an action against the defts, a railway company, it appeared that the plaintiffs were leaving a station belonging to the defendants in a carriage, when the horse was frightened by the sight and sound of a locomotive engine at the station which was blowing off steam, and the carriage was upset and the plaintiffs injured. It did not appear that the engine was defective, or that it was used in an improper manner, or that the approach to the station was inconvenient, but the jury found that the defendants were guilty of negligence in not screening the railway from the roadway leading to the station and that such negligence had caused the accident: Held, that the defendants were not liable as there was no obligation on their part to screen the railway from the road. *Simkin v. L. & N. W. Ry. Co.* 21 Q. B. D. 453; 59 L. T. 797 *Rea. v. Pease* 1. N. & M. 690.

Company liable for nuisance—When:—When a railway was in course of construction at the rear of a shop, and the company took temporary possession of an adjoining piece of land not owned by the owner of the shop, and erected a mortar mill thereon, for the purposes of making mortar to be used in the construction of the railway, that not being one of the purposes named in the section. Held, that an injunction would be granted to restrain the railway company from working the mortar mill so as to be a nuisance to the owner of the shop, as the making of mortar was not an act necessary for making the railway, for, the company might get mortar elsewhere, and it was not an act without which the railway could not be made. *Fenwick v. East London Ry. Co.* 44 L. J. Ch. 602; L. R. 20 Eq. 544.

A railway Company has not, by reason of the powers in its Special Act enabling it to work the line in the way most convenient to itself, any power to commit an act which, if committed, by a private person, would constitute a nuisance, and be restrainable by injunction accordingly. *Smith v. Midland Ry.* 37 L. T. 224;

Right to cause a nuisance:—A right to cause a nuisance might be acquired as an easement. *Crump v. Lambert* L. R. 3 Eq. 409; *Kashinath v. Narajen* 22 Bom. 831.

Injury in avoiding obstruction:—The person causing the inconvenience by his negligence is liable for any injury that may result from an attempt to avoid such inconvenience. *Adams v. L. & Y. Ry. Co.* L. R. 4. C. P. 739; *Lee v. Lixey* 63 L. T. 285.

11. (1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely:—

- (a) Such and so many convenient crossings, bridges, arches, culverts and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the Governor General in Council, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and
- (b) all necessary arches, tunnels, culverts, drains, water-courses or other passages, over or under or by the sides of the railway, of such dimensions as will, in the opinion of the Governor General in Council, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be.

(2) Subject to the other provisions of this Act, the works specified in clauses (a) and (b) of sub-section (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works.

(3) The foregoing provisions of this section are subject to the following provisos, namely:—

- (a) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have

been paid compensation in consideration of their not requiring the works to be made;

- (b) save as hereinafter in this Chapter provided, a railway administration shall not, except on the requisition of the Governor General in Council, be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic;
- (c) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream.

(4) The Governor General in Council may appoint a time for the commencement of any work to be executed under sub-section (1), and if for fourteen days next after that time the railway administration fails to commence the work or, having commenced it, fails to proceed diligently to execute it in a sufficient manner, the Governor General in Council may execute it and recover from the railway administration the cost incurred by him in the execution thereof.

Most part of this section is adapted from the Railway Clauses Act of 1845 (8 & 9 Vict. c. 20). Thus sub-section 1 and 3 (a) are adapted from S. 68 and its proviso, sub-section 3 (b) from S. 73 and sub-section 4 from S. 70 of the said Railway Clauses Act of 1845.

Section 68 of the Railway Clauses Act of 1845:—"The Company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of Lands adjoining the Railway (that is to say):—

Such and so many convenient Gates, Bridges, Arches, Culverts and Passages over, under or by the sides of or leading to or from the Railway as shall be necessary for the purpose of making good any interruptions caused by the Railway to the use of the lands through which the Railway shall be made; and such works shall be made forthwith after the part of the Railway passing over such lands shall have been laid out or formed or during the formation thereof.

Also sufficient Posts, Rails, Hedges, Ditches, Mounds or other Fences for separating the land taken for the use of the Railway from the adjoining lands

not taken, and protecting such lands from Trespass, or the cattle of the owners or occupiers thereof from straying thereon, by reason of the Railway, together with all necessary Gates made to open towards such adjoining lands, and not towards the Railway and all necessary Stiles; and such Posts, Rails, and other Fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be:

Also all necessary Arches, Tunnels, Culverts, Drains or other Passages either over or under or by the sides of the Railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the Railway as before the making of the Railway, or as nearly so as may be; and such works shall be made from time to time as the Railway Works proceed.

Also proper watering places for cattle where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places; and such watering places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the Railway had not been made, or as nearly so as may be; and the company shall make all necessary Watercourses and Drains for the purpose of conveying water to the said watering places.

Provided always, that the Company shall not be required to make such accommodation Works in such a manner as would prevent or obstruct the working or using of the Railway, nor to make any accommodation Works, with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of making them."

Sec. 73 of the Railway Clauses Act, 1845:—"The Company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the Railway after the expiration of the prescribed period, or, if no period be prescribed, after five years from the completion of the works, and the opening of the Railway for public use."

Sec. 70 of the Railway Clauses Act, 1845.—If for fourteen days next after the time appointed by such Justices for the commencement of any such works the company shall fail to commence such works, or having commenced shall fail to proceed diligently to execute the same in a sufficient manner, it shall be lawful for the party aggrieved by such failure himself to execute such works or repairs; and the reasonable expenses thereof shall be repaid by the Company to the party by whom the same shall so have been executed; and if there be any dispute about such expenses, the same shall be settled by two Justices. Provided always that no such owner or occupier or other person shall obstruct or injure the Railway, or any of the works connected therewith, for a longer time nor use them in any other manner than is unavoidably necessary for the execution or repair of such accommodation works."

Effect of the Section:—The effect of Section 11 of the Indian Railways Act is that the opinion of the executive, with reference to the sufficiency of accommodation works, is final. *Sectamraju v. The Collector of Godavri* 25 Mad. 632.

The words "as little damage as possible" in clause 2 refer only to the manner of constructing and using the works. *Fenwick v. E. L. Ry.* 20 Eq. 544.

Meaning of Accommodation Works:—The words "Works for the accommodation" mean such works as are mentioned in the section, i. e. works for the benefit of lands adjoining the railway. *Rhondda and Swansea Bay Ry. v. Talbot* 66 L. J. Ch. 570; (1897) 2 Ch 131; Lands required by a railway company for accommodation works are lands required for the purpose of "the undertaking" or of the railway. Every work which a railway company is empowered to do, not merely what it is compelled to do, is a purpose of the undertaking. *Wilkinson v. Hull &c. Ry. and Dock Co.* 51 L. J. Ch. 788.

Works for the accommodation of owners:—Under the provisions of the Railway Clauses Consolidation Act, 1845 (8 and 9 Vic. C. 20) Ss. 16, 68–76 for the construction by a Railway Co. of "Accommodation Works" for the benefit of a landowner whose land is severed by the railway, the landowner is entitled to a convenient passage over the railway sufficient to make good, so far as possible, any interruption which the construction of the railway causes by severance in the working or use of his land, including any alteration or extension of that working or use which could or ought to have been contemplated by the parties when the accommodation works were made or accepted.

A railway severed the land of a landowner and crossed on the level, a road belonging to him upon which he had a tramway by which goods and traffic from his land were conveyed to a neighbouring port. He had also allowed coals to be conveyed along the tramway to the port from a colliery not situate on his land. On the occasion of the purchase by the railway company of the portion of the road crossed by the railway and of other land belonging to him taken by the company, the company entered into an agreement with him that they would construct and maintain certain works "for the accommodation of the owners and occupiers for the time being of the lands adjoining the railway." These works included a level crossing for the tramway. The level crossing was constructed and the company entered into a deed of covenant with the landowner in accordance with the agreement. The landowner's successor in title afterwards claimed to be entitled to convey over the level crossing goods and traffic brought to her land from other places whether situate on her estate or not.

Held, that she was not entitled to use the level crossing for the purposes of conveying goods and traffic so as essentially to increase the burden of the easement by altering or enlarging its character, nature or extent as enjoyed at or previously to the date of deed of covenant or as since enjoyed by her or her predecessor in title, if, owing to acquiescence or otherwise that subsequent enjoyment was binding

on the company. *G. W. Ry. Co. v. Talbot* (1902) 11 ch. 759; *Tuff Vale Ry. Co. v. Gordon* (1909) ch. D. Vol. 48. (*United Land Co. v. G. E. Ry. Co.* L. R. 10 ch. 586 and *Finch v. G. W. Ry. Co.* 5 Ex. D. 254 distinguished); *Neath Canal Co. v. Ynisartwed Resolwen Colliery Co.* L. R. 10 Ch. 450.

Dimensions of Arch:—A railway company in exercise of the powers conferred on it by an Act of Parliament, which gave compensation to persons whose property might sustain damage from its operations, was proceeding to erect an arch above a mill race, for the purpose of sustaining an embankment on which the railway was to be constructed, and it appearing that injury would be done to the mill if the arch were of the proposed dimensions, but that the injury would be avoided if the arch were of certain larger dimensions an injunction was granted to restrain the company from making over the mill race an arch of less than certain specified dimensions. *Coates v. Clarence Ry.* 1 Russ & M. 181.

Duty of making and maintaining fences.—It is an absolute obligation on railway companies as between them and the owners and occupiers of adjoining lands to make and maintain fences to prevent cattle straying on the line. *Buxton v. N. E. Ry. Co.* 37 L. J. Q. B. 258. This duty imposed upon railway companies as to the making & repairing of fences between their railways and the adjoining lands is not more extensive than that imposed upon ordinary tenants by the common law. *Ricketts v. East & West Indian Docks* 21 L. J. C. P. 201; 7 Railw. cas. 295; *Man. Shef & Linc Ry. v. Wallis* 23 L. J. C. P. 85; 7 Railw. cas. 709; If in consequence of the fences of a railway being out of repair, any cattle gets upon it and is killed, the company would be held liable. *Sharred v. L. & N. W. Ry.* 4 Ex. 580; *Bessant v. G. W. Ry.* 8 C. B. (N. S.) 368. Contra—*Henry Corder v. Balaprasad P.* J. 1895 P. 91 (See note to Sec. 13.) But even where there is a breach of duty by the Company, the owner of cattle cannot recover if his own negligence has contributed to the loss. *Ellis v. L. & S. W. Railway Co.* 2 H. & N. 424; *Haigh v. L. & N. W. Ry. Co.* 1 F. & F. 646.

Duty towards passengers as regards fencing;—There is no duty on a railway company to fence their line of railway towards passengers or persons already on the line. The duty on them to fence is towards persons off the line, to prevent the latter from getting or straying upon it. *Harrold v. G. W. Ry. Co.* 14 L. T. 440.

The fences, gates and the like works must be sufficient to resist the ordinary acts of cattle, *Page v. G. E. Ry. Co.* 74 L. T. 585 and to prevent them from getting on to the line from the adjoining land. *Bessant v. G. W. Ry.* 8 C. B. (N. S.) 368.

The general obligation imposed upon a Railway regarding making and maintaining fences is not affected by the provisions in Sub Section 3 (b)—The general obligation imposed upon a railway company by S. 68 of the Railway Clauses Act, 1845, to make and maintain sufficient fences is not affected by the provision in S. 73 (S. 11 sub section 3 (b)) that the company shall not be com-

pelled to make "any, further or additional accommodation works" after 5 years [10 years according to S. 11 sub-section 3 (b)] from the opening of the railway in a case where the company have made no such works at all within that period. A railway company are therefore liable for injury arising from the defective state of a fence erected by them after the expiration of the five years. *Dixon v. G. W. Ry. Co.* 66 L. J. Q. B. 132, (1897), 1 Q. B. 300.

Extinguishment of right to accommodation works:—A railway company which on cutting through a landowner's property has been obliged under S. 68 of the Railway Clauses Act, 1845, to make accommodation works, is not bound to keep up such works when the two parts of the lands so severed have passed into the hands of different owners, neither of whom has any right of passing over the other's land. The right to such works is then abandoned, and finally extinguished, and will not revive even if the whole of the land afterwards belongs to one owner. *Mild Ry. Co. v. Gribble* 64 L. J. Ch. 826; (1895) 2 Ch. 127; affirming 60 J. P. 55.

Suit to enforce construction of accommodation work not maintainable:—Plaintiff alleged that the execution of certain works by a railway company under sec. 7 had interfered with his right to the flow of water to his land. He did not suggest that the company had exceeded the powers conferred on them by that section, but claimed that they had failed to discharge the obligation, imposed by sec. 11 (b) of the Act, to make the necessary accommodation works, and sought a decision of the court that such works should be executed. It was held that he had no right of action. *Sectam Raju v. The Collector of Godavery* 25 Mad. 632.

Owner releasing right to accommodation works does not exonerate railway from liability to maintain fences for benefit of occupier:—The plaintiff in 1846 became tenant from year to year of land belonging to one G. In 1847 the defendant a railway company, acquired part of the land in the exercise of their statutory powers, and by arrangement with G. paid him compensation in lieu of all accommodation works, including the right to have his land fenced from the railway, G. releasing the defendants from their statutory obligation in that respect. The defendants, however, made a fence of posts and rails between the land so occupied by the plaintiff and a ditch in the defendant's land adjoining the railway, and they planted a hedge on the side of the ditch nearest the railway itself, sufficient to prevent animals from straying thereon. They, however, neglected to keep the posts and rails, and in consequence of their neglect to do so, a cow belonging to the plaintiff, in 1879, whilst the plaintiff so continued in the occupation of the land under the original tenancy which had never been determined, fell into the ditch and was killed:—Held, that the defendants were liable for the loss of the cow, for their arrangement with the owner did not exonerate them from their liability under the Railway Clauses Act, 1845, S. 68, to maintain the fence for the benefit of the occupier, and so as to prevent his cattle from straying from his land, *Corry v. G. W. Ry. Co.* 50 L. J. V. B. 386; 7 Q. B. D. 322.

Effect on General rights—Special Agreement:—Where a person has made a special agreement as to crossings on a line of railway and from particular circumstances, he allows that agreement to fall through, he cannot afterwards set up general rights under the Railway Acts to have other crossings made. *Darnley v. L. C. & D. Ry. Co.* 36 L. J. Ch. 404; L. R. 2. H. L. 43.

Delegation of powers of Governor General in Council to Railway Board:—Before the passing of the Railway Board Act IV of 1905, the powers of Governor General in Council were delegated to Local Governments with regard to railways under their control by Notf. No. 268 dated 11th June 1890; but since the passing of the said Act IV of 1905, the powers referred to in the said Notification have been delegated to the Railway Board by Notf. No. 801 dated 24th March 1905—See Ss. 4 and 7 pp. 12 & 13 and Sec. 144, post.

Necessary for the purpose of making good any interruptions—Discretion of company as to the most convenient mode of doing the works:—The word 'necessary' in S. 68 of the Railway Clauses Act, 1845, refers to the obligation to make good the interruption, and does not confine the company to any particular mode of doing the works. Where there are several modes of doing the works, the company, acting under the advice of their engineer, are the sole judges as to which mode should be adopted; but if they do not act bonafide, the court will interfere. *Wilkinson v. Hall & Co. Ry. & Dock Co.* 51 L. J. Ch. 788; 20 Ch. D. 323.

To convey water as freely as before—Effect of sub section 1 cl. b:—The purpose stated in the section (11) for which the works are to be constructed is to convey water as freely as before from or to certain lands, and the aggrieved person is the owner of those lands. * * *

If persons who own lands other than those mentioned in the section are injured, their remedy must be the ordinary one by suit, and there is nothing in the Act (IX of 1890) which bars this remedy, still less can there be any bar to the present suit, in which the plaintiff alleged and has proved injury, not so much by the construction or non-construction of accommodation works as by the construction of the railway line itself generally and especially by the negligence in that the line was allowed to become a channel for discharging on to his land water which before the construction never came near it. (Per Parsons.) J. in *Gaekwar of Baroda v. Katcharabhai* 2 Bom. L. R. 357 at p. 364-65. (P. C.) 5 Bom. L. R. 405.

Liability for sending water on adjoining lands for protection of Company's premises:—By reason of an unprecedented rainfall, water was accumulated against one of the sides of the deft railway's embankment to such an extent as to endanger the embankment. To protect their embankment, the defts cut trenches in it by which the water flowed through and went ultimately on to the land of the plff, which was on the opposite side of the embankment and at a lower level and flooded and injured it to a greater extent than it would have

done, had the trenches not been cut. In an action for damages it was held that though the defendants had not brought the water on their own land, they had no right to protect their property by transferring the mischief from their own land to that of the plaintiff and that they were therefore liable. *Whally v. L. & Y. Ry. Co.* 53 L. J. Q. B. 285; 13 Q. B. D. 131; *Hurdman v. N. E. Ry.* 47 L. J. C. P. 308; 38 L. J. 336; *Keats v. Hollywell Ry.* 28 L. T. 183.

Company liable for neglect:—A railway was carried along an embankment upon low lands lying between a river and A's land. The low lands were separated from A's land by a bank which, before the railway embankment was placed there, was sufficient to protect his land from the flood waters of the river; but in consequence of the embankment, the flood waters were unable to spread themselves over the low lands *as formerly*, and flowed over the bank into his land:—Held, that although the company were not required by their Act to make flood openings to their embankment and would not be compellable by mandamus to make them, yet, as they might by proper caution have prevented the injury sustained by A, an action was maintainable against them for such injury, *Lawrence v. G. N. Ry. Co.* 16 Q. B. 643; 7 Railw. cas. 656.

Damage Caused by Negligence:—Where damage is caused by neglect of a proper precaution, the company cannot be heard to say that even if proper precautions had been taken, the same damage would have resulted. *Nitrophosphate & Co. v. London & St. Catherine Docks Co.* 9 Ch. D. 503; nor where there is negligence of the company, is it any excuse that such negligence would not have caused any injury unless there had also been negligence on the part of third persons *Harrison v. G. N. Ry. Co.* 33 L. J. Ex. 266; *Harris v. Mobbs* 2 Ex. D. 268.

Whether action lies for insufficiency:—A railway company constructed a culvert to carry off water from land adjacent to the railway. No complaint was made by the owner of the land of the insufficiency of the culvert, and no application was made to Justices for additional accommodation works within five years limited by S. 73 (ten years according to S. II Sub-section 3 (b) which is adapted from S. 73 of the Railway Clauses Act 1815). An injury having subsequently arisen to the land from the insufficiency of the culvert to carry off all the water, an action in respect of such injury was brought by the occupier against the Railway company in which it was alleged that the culvert was insufficient:—Held, on demurrer that an action would not lie. *Colley v. L. & N. W. Ry. Co.* 42 L. J. Ex. 575; 42 L. T. 807; *Hood v. N. E. Ry. Co.* 40 L. J. Ch. 17; L. R. 11 Eq. 116. *Sectam Raju v. The Collector of Godavery* 25 Mad 632.

Precautions in construction of dangerous works:—Where a railway company has omitted to perform a statutory duty imposed for (with or without other objects) the avoidance of danger to the public, it seems sufficient to infer liability that the facts point to the omission as a probable cause of the injury although other causes might be suggested. Thus where a railway company had

ected to erect as required by statute a gate or a stile across a public footpath which crossed the railway on the level, the fact of a child of tender years being found on the level crossing with a foot cut off by a passing train was held sufficient to infer liability on the part of the railway company. *Williams v. G. W. Ry. Co.*, L. R. 7 Ex. 157; 43 L. J. Ex. 105; 31 L. T. 124; This case was distinguished in *Wakelin v. L. & S. W. Ry. Co.* 56 L. J. Q. B. 229; 55 L. T. 709 where a person was found killed on the line near a level crossing. It did not appear that any statutory precaution had been neglected, and the only suggestion of negligence was that the watchman employed by the company to take charge of the gates by the day, was withdrawn at night.

Where liability is sought to be established for breach of an implied duty to take care, it lies upon the plaintiff to prove some negligent act or omission and to show that it is the approximate cause of the injury alleged. Where works are going on over a line of railway, with which works the railway company has nothing to do and the execution of such works is entrusted to contractors who are entirely independent of the railway company, it is not the duty of the railway directors to assume that such works will be negligently conducted by those who have contracted for their execution and to take precautions against possible negligence on the part of persons who are not in their employment or under their control. If railway directors undertake to carry passengers over their own line, they would be bound to see that their own line was in perfect order and would be responsible for any negligence occurring on the other line, over which they had contracted to carry passengers, whether under their control or not, but would not be responsible for matters altogether extraneous to the work in which they were engaged, unless there was reasonable ground for apprehending that extraordinary precautions were required. Per Lord Colonsay—If the operation which the contractors were performing was one which, according to previous knowledge and experience, was however carefully performed likely to lead to mischief, it would be incumbent on the railway company to foresee and take precautions against it. *Daniel v. Metropolitan Ry. Co.* L. R. 5 H. L. 45 p. 63; 40 L. J. C. P. 121; 54 L. T. 815.

Repairing road raised on inclined planes:—A railway company, being authorised to carry their railway across a high road on the level, constructed the railway at a slightly higher level than the road, and in order to bring the road up to the level of the railway, raised it by means of inclined planes on either side of the railway under powers conferred by their Special Act. The Act was silent as to any obligation of the company to repair the roadway upon the inclined planes. Held, that there was imposed upon the railway company by common law, as a condition of the statutory authority to interfere with the high road, an obligation to keep in repair the roadway upon the whole of the inclined planes, including those portions which lay outside the fences of the railway. *Hertfordshire County Council v. G. E. Ry. Co.* (1909) 1 K. B. 368 (*West Lancashire Rural Council v. L. & Y. Ry. Co.* (1903) 2 K. B. 394 distinguished.)

12. If an owner or occupier of any land affected by a railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land, or if the Local Government or a local authority desires to construct a public road or other work across, under or over a railway, he or it, as the case may be, may at any time require the railway administration to make at his or its expense such further accommodation works as he or it thinks necessary and are agreed to by the railway administration or as, in case of difference of opinion, may be authorised by the Governor General in Council.

Power for owner, occupier or local authority to cause additional accommodation works to be made.

This section is adapted from S. 71 of the Railway Clauses Act 1845 (8 & 9 Vict. C. 20) which reads as hereunder.

S. 71:—"If any of the owners or occupiers of lands affected by such railway shall consider the accommodation works made by the company or directed by such Justices to be made by the company, insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at any time, at his own expense to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the company, or, in case of difference, as shall be authorised by two Justices."

Scope of the Section:—S. 12 is purely enabling and permissive and not prohibitive. It gives a particular right to a local authority as against a Railway Administration, but does not thereby impliedly abolish any independent right vested in the local authority by any other enactment. What it does is, in effect, to give the plaintiffs, as regards railway land, an additional and not a substituted right, so that they might, at their option, either themselves make such further accommodation works or require the defendants to make them under this section. The provisions of this section would only be obligatory upon a local authority desiring further accommodation works and not having any independent power, such as the powers created by Act III of 1888 for the purpose. Thus this section only confers a power on the local authority and does not purport to take away any other power or duty existing *ultrunde*. There is nothing inconsistent with it in sec. 8. It is reasonable enough that a local authority should be empowered, subject to certain conditions and for the purposes of its own act, to lay pipes under railway as well as under other land, and that nevertheless the Railway Administration should be authorized, for the purpose of exercising the powers conferred upon it by Act IX of 1890, to alter the position of any such pipe, subject to the local authority's superintendence *G. I. P. Ry. Co. v. The Munc. Corp. of Bombay* 23 Bom. 358 p. 366

Accommodation works—Insufficient—In S. 71 of the Railway Clauses Consolidation Act, 1845, the words "accommodation works" mean such works as

are mentioned in S. 68—that is, works for the benefit of lands adjoining the railway; and “insufficient” means insufficient for the use of the lands in the condition in which they are when the line was made. *Rhondda and Swansea Bay Ry. v. Talbot* 66 L. J. Ch. 570; (1897) 2 Ch. 131; see also S. 11 p. 40.

What are further accommodation works within the meaning of the section:—The Vehar main pipe, which passed through the railway company's lands, was vested in the plaintiffs. The soil above the main as well as the space of 22 inches between the western skin of the main and the railway fence was vested in the defendants. The land west of the railway fence as far as 266 feet north of the Arthur Road was vested in the plaintiffs. The result is that everything done by the plaintiffs west of the fence was done upon their own property, but that in crossing without the permission of the defendants the space of 22 inches between the fence and the main, they committed a trespass, unless they can show express statutory authority justifying their action. The plaintiff being desirous of making a connection between the Vehar and Arthur Road main pipes, their servants entered on the lands in question but were prevented by the defendants from carrying out the desired works and hence an action was brought to decide whether they were entitled to enter the lands in question. Justice Strachey while delivering the judgment said “The proposed connections are not further accommodation works” within the meaning of S. 12 of the Indian Railways Act. They are a public work for which, under the section, a local authority might require accommodation works to be made. In the case of a local authority desiring to construct a public road or other work across, under or over a railway, the accommodation works required must obviously be works other than the public work to be constructed; there must be first, a public work whose construction is desired by the local authority, and secondly, works required to be made for its commodious use. A local authority desiring to make only a public road cannot require the railway Administration to make the road as an accommodation work. What the local authority may require the railway administration to make is not the road or other public work, but *accommodation works for its commodious use*. The public work itself must be made by the local authority under some other statutory power. * * * Again it is not “accommodation work” simply, but “further accommodation works” that the section provides for. The “further accommodation works” must mean the same thing, throughout the section; must have the same meaning whether the requisition to the railway Administration is made by the owner or occupier mentioned in the opening words of the section or by the local Government or a local authority *G. I. P. Ry. Co. v. Munc. Corp. of Bombay* 23 Bom. 358. pp. 366-367.

Further (accommodation works):—The word “further” in itself and also in connection with the opening words, obviously has reference to S. 11, to which S. 12 is a rider, and in which the term “accommodation works” is fully defined. Ss. 11 and 12 of the Indian Railways Act are modifications

68 and 71 of the Railway Clauses Consolidation Act, 1845 (8 and 9 Vict. C. 20), though S. 71 refers only to owners and occupiers and not to local authorities desiring to construct public works. It has been held that the "further" works contemplated by S. 71 do not mean any kind of works which would at any time be convenient for the landowners, but works additional to accommodation works already made by the Railway Company under S. 68, and of the same kind as those which might be required under that section. *G. I. P. Ry. Co. v. Munc. Corp. of Bombay* 23 Bom. 358 p. 367.

Land-owner's power to make additional works:—S. 71 of the Railway Clauses Consolidation Act, 1845, does not enable owners of adjoining lands to construct accommodation works at their own expense, unless there have been some previous accommodation works made by the Railway company which have proved insufficient. Therefore, where, on the purchase of the site of the line, the company and the landowner have agreed that no accommodation works shall be made by the company, the landowner cannot subsequently construct under that section *Rhondda and Swansea Bay Ry. v. Talbot* 66 L. J. Ch. 570, (1897) 2 Ch. 131.

Fences, Screens, Gates and Bars over and under bridge:—As regards the power of the Governor General in Council to require a railway company to erect fences, screens, &c. or to employ persons to open and shut gates &c. within a time to be specified in the requisition or within such further time as he may appoint &c., see S. 13; and as regards his powers to require the construction of an over or under bridge where the railway line crosses a public road on the level within such time as he thinks fit &c.—see Section 14.

Local authority:—See Section 8 at page 28 or S. 3(7) of the Indian Telegraph Act XIII of 1885 or S. 3 (28) and 4 (2) of the General Clauses Act X of 1897.

13. The Governor General in Council may require that, within
Fences, screens, gates and bars.
a time to be specified in the requisition, or within such further time as he may appoint in this behalf,—

- (a) boundary-marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith;
- (b) any works in the nature of a screen near, to or adjoining the side of any public road constructed before the making of a railway be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals be frightened by the sight or noise of the rolling stock moving on the railway;

- (c) suitable gates, chains, bars, stiles or handrails be erected or renewed by a railway administration at places where a railway crosses a public road on the level;
- (d) persons be employed by a railway administration to open and shut such gates, chains and bars.

The first portion of this section is adapted from S. 10 of the Railway Regulation Act, 1842 (5 & 6 Vict. C. 55); Clause A is adapted from S. 68 and clause B from S. 63 of the Railway Clauses Act, 1845 (8 & 9 Vict. C. 20), clause C., from S. 9 of the Railway Regulation Act, 1842 (5 & 6 Vict. C. 55) and S. 47 of the Railway Clauses Act, 1845 (8 & 9 Vict. C. 20) and clause D. from S. 48 of the Railway Clauses Act, 1845 (8 & 9 Vict. C. 20).

Who to bear cost of Works under this Section :—There is no provision in this (Indian Railways) Act as to who should bear the costs of doing the work mentioned in this Section but it seems that the Railway Administration will have to bear the same.

Delegation of powers of Governor General to Railway Board :—See Sections 4 & 7 pp. 9 and 12 S. 144 post.

Clause A :—"Boundary Mark" means any erection, whether of earth, stone, or other material, and also any hedge; unploughed ridge or strip of ground, or other object, whether natural or artificial, set up, employed or specified by a Survey Officer, or other Revenue Officer having authority in that behalf, in order to designate the boundary of any division of land. Bombay L. R. Code, S. 3 (10) of Act. V. of 1879.

Rules for the demarcation of land permanently occupied for the use of Railways in India :—

- (1). All land permanently occupied for the purposes of a Railway shall have its boundaries defined on the ground in such a manner as to enable such boundaries to be readily ascertained and identified.
- (2). For this purpose the boundary of the Railway land may be defined by a continuous wall, fence or ditch, or by detached marks, posts, or pillars.
- (3). Where the boundary mark is continuous, the boundary of the Railway land is to be on the outer ridge of the wall, fence or ditch, that is to say, the wall, fence or ditch will be situated wholly on Railway land.
- (4). Where detached marks, such as isolated posts or pillars are boundary of the Railway land will pass through the centres of between the marks, the boundary will in each case be from the centre of one mark to the centre of the next

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- (5). Detached marks are in no case to be at a greater distance apart centre to centre than one-eighth of a mile (660) feet). They are to be of a substantial character not easily destroyed or moved by accident or mischief, and are to be of such size and form as to be easily found and recognized
- (6). Each detached boundary mark is to bear a number, and the position and corresponding number of each detached boundary mark is to be shown on the land plan.
- (7) Where a fence, wall or ditch is for convenience situated at some distance within the boundary and does mark the actual limit of the Railway land, it will be necessary that in addition to such fence, wall or ditch, the actual boundary of the Railway land shall be properly marked and defined in accordance with these Rules. G. R. No. 6937 Dated 1st Oct., 1890, and order No. 45 of Railway Board circular No., 27 R. C. 1907 circulated with G. R. 7953 dated 12th August 1907 Joglekars Bom, L. R. Code 1st Ed. page 408.

Obligation to provide or renew boundary marks or fences:—From the wordings of the Section it would appear that there is no obligation on the Railway Company to provide or renew a fence unless so required by the Governor-General in Council. As no requisition was made under this Act, for the erection of a fence Sargent C. J. and Fulton J. held, "The company was under no obligation, statutory or otherwise, to fence the line, and if this be so, as there was no evidence in the case that the accident was caused by any negligence on the part of the driver of the train, there would be no cause of action against the Company" *Henry Conder v. Ballaprasad* P. J. 1895. 91 at P. 92; *Roberts v. G. W. Ry. Co.* 27 L. J. C. P. 266; 4 Jur (N. S.) 1240.

Duty to provide or renew screens:—From the Section, it also would appear that there is no obligation on the Railway Company to provide or renew any works in the nature of screens unless so required by the Governor-General in Council and that a requisition to that effect has to be made to him. In England also there is no such obligation cast upon the Railway Companies unless the provisions of S. 63 of the Railway Clauses Consolidation Act, 1845. (8 and 9 Vict. C. 20) have been put in force. Thus in an action against the defendants, a Railway Company, it appeared that the plaintiffs were leaving a station belonging to the defendants in a carriage, when the horse was frightened by the sight and sound of a locomotive engine at the station which was blowing off steam, and the carriage was upset and the plaintiffs injured. It did not appear that the engine was defective, or that it was used in an improper manner or that the approach to the station was inconvenient, but the Jury found that the Defts were guilty of negligence in not screening the Railway from the road way leading to the station and that such negligence had caused the accident:—Held, that the defendants were not liable, as there was no evidence of any obligation on their part to screen the Railway from the road. *Sinkin v. L. & N. W. Ry. Co.* 21 Q. B. D. 453; 59 L. T. 797;

English Law:—For S. 68 of the Railway Clauses Act Act, 1845, See Section 11 of this Act, (1X of 1890) where it is given in full.

Duty to owners of lands as regards fencing:—S. 68 of the Railway Clauses Act, 1845 imposes an absolute obligation on Railway Companies as between them and the owners and occupiers of adjoining lands to make and maintain fences to prevent cattle straying on the line *Buxton v. N. E. Ry. Co.* 37 L. J. Q. B. 258; L. R. 3 Q. B. 540; 9 B. & S. 824, 18 L. T. 795; This obligation is co-extensive only with the common law prescriptive obligation to repair fences. *M. S. & L. Ry. Co. v. Wallis* 7 Railw. Cas 709, 23 L. J. C. P. 85; 18 Jur 268; The said Section 68, requiring Companies to fence their lines against adjoining landowners does reach a case where the adjoining land belongs to the company themselves. *Marfell v. South Wales Ry. Co.* 8 C. B. (N. S.) 525; 29 L. J. C. P. 315. The duty imposed by this Section (S 68) as to the making and repairing of fences between their Railways and adjoining land is not more extensive than that imposed upon ordinary tenants by common law. *Ricketts v. East and West India Docks* 7 Railw. Cas; 21 L. J. C. P. 201.

To fence off their own yards-cattle:—A colt strayed from a field on to a public road, abutting upon which was a yard not fenced from a Railway, the gate of which was, through the neglect of the Company's servant left open. Whilst the colt was being driven back to the field by the servant of the owner, it escaped into the yard, and thence on to the Railway, where it was killed by a passing train. It was held that the Company was responsible. *Mid. Ry. Co. v. Daykin* 25 L. J. C. P. 73; C. B. 126.

Duty to passengers.—Section 68 of the Railway Clauses Act, 1845, imposes no duty on a Railway Company towards its passengers to keep up the fences, and a Railway Company is not bound, at common law, to maintain fences sufficient to keep cattle off the line under all circumstances, but is bound to use every reasonable care to prevent them from straying on to the line. There is no such duty put on a Railway Company to fence their line of Railway as towards passengers or persons already on the line. The duty on them to fence is towards persons off the line, to prevent the latter from getting or straying upon it. *Harrold v. G. W. Ry. Co.*, 14 L. T. 440.

Rights of third parties:—A railway Company let surplus land to a tenant, separating it from the adjoining land not taken by means of an open post-and-rail fence four feet high. The tenant planted his land with vegetables. Horses kept on the adjoining land of the defendant, by reason of the insufficiency of the fence, passed their heads through and over it, and did damage to the defendant's crops:—Held, that the duty of fencing being by the Railway Clauses Act, 1845, S. 68. imposed upon the railway Company, the defendant was not responsible to their tenant for the trespass of his cattle. *Wiseeman v. Booker* 3 C. P. D. 184; 39 L. T. 292.

Defective fence-liability of railway:—A Railway Company kept a turntable unlocked and therefore dangerous for children on the land close to a pub.

road. The Company's servants knew that the children were in the habit of trespassing and playing with a turntable, to which they obtained easy access through a well worn gap in the fence which the railway Company were bound by law to maintain. A child of 4 or 5 years, playing with other children on the turntable having been seriously injured:—Held, that there was evidence of actionable negligence on the part of the railway Company. *Cooke v. Mid G. W. Ry. Co. of Ireland* (1909) A. C. 229. distinguished in *Jenkins v. G. W. Railway Co.* in which a child of two & a half years old (plff) lived with his parents in one of a row of houses in front of which was a highway. On the other side of the highway, there was a fence of posts and rails belonging to and repairable by a railway company. Inside the fence on the company's premises, there was a siding, a pile of wooden railway sleepers and beyond them (about 33 yards away) the main line of the company's railway. The plaintiff got or was assisted over or through the fence and when on the main line, was run over by an express train of the company sustaining serious injury. In an action against the company for damages, it was held that the leave and license (if any) to play on the pile of sleepers was confined to that spot, and did not extend to the main line. That there was no duty on the company to fence off the sleepers from the rest of their land and that they were not liable. *Jenkins v. G. W. Ry. Co.* (1912) I. K. B. 525; 81 L. J. (K. B.) 878.

Section 47 of the Railway Clauses Act, 1845:—*Provides that:—*If the Railway cross any turnpike road or public carriage road on a level, the Company shall erect and at all times maintain good and sufficient gates across such road on each side of the Railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates. And such gates shall be kept constantly closed across such road on both sides of the Railway except during the time when Horses, Cattle, Carts, or Carriages passing along the same shall have to cross such railway and such gates shall be of such dimensions and so constructed as when closed to fence in the Railway and prevent Cattle or Horses passing along the road from entering upon the railway; And the person entrusted with care of such gates shall cause the same to be closed as soon as such horses, cattle, carts or carriages shall have passed through the same under a penalty of fourty shillings for every default therein. Provided always, that it shall be lawful for the Board of Trade in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the Railway, to order that such gates shall be kept so closed instead of across the road and in such cases such gates shall be kept constantly closed across the railway, except when engines, or carriages passing along the Railway shall have occasion to cross such road in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

Erection of good and sufficient gates or stiles:—S. 61 of the Railway Clauses consolidation Act, 1845 provides that if a railway shall cross a highway, which is a footway on the level, the company shall erect and maintain good and

sufficient gates or stiles on each side of the railway where the highway shall communicate therewith.

The plaintiffs horse, without any negligence on the part of the plaintiff, strayed on to a public foot-path, which the defendants' railway crossed on the level, and passed through a gate, erected by the defendants, on the railway and was killed by a passing train. The fastening of the gate was defective:—Held that the defendants had failed to maintain a good or sufficient gate, as required by S. 61; that defendants' duty under the section was not a duty owed only to persons lawfully using the foot-path, and that the defendants were liable to plaintiff for the loss of his horse. *Parkinson v. Garstang & Knott End Ry. Co.* 1. K. B. (1910) 615.

Maintaining Gate posts—Where a railway company was, by a private Act of Parliament, authorised to maintain certain gate posts which they had built before the passing of the Act in the highway and a cabman drove against the gate post and thereby sustained damage in dark night by reason of the lights on the highway near the gate posts being dimmed by the Lightning Regulations due to war, the railway company was not liable for negligence as they were not bound to do anything positively but merely to maintain the gate posts which had been built already *G. C. Ry. Co. v. Hewlett* (1916) 2A. C. 511.

Duty to Protect.

(A). **Insufficiency of gates**:—At the point where a railway crossed a high road by a level crossing there were two large gates, which when closed, covered the entire width of the metalled road and fenced in the line therefrom. At the side of the large gates, and beyond the width of the metalled road, but communicating therewith by a short footpath, there was a small gate for foot passengers. A piece of fence, which stood immediately beyond the small gate, and against which it rested was allowed, by the Railway Company, to get out of repair, and become rotten, in consequence whereof some horses belonging to the plaintiffs, which were straying on the high road, were enabled by passing along the short footpath and pushing against the fence, to get on to the line, where they were killed by a passing train:—Held, that the Company had failed to satisfy the obligation to fence their line imposed on them by S. 47 of the Railway Clauses Act, 1145, and were liable in an action for damages. *Charman v. S. F. Ry. Co.* 57 L. J. Q. B. 597; 21 Q. B. D. 524.

(B). **Absence of gates**:—Where a railway Company has omitted to perform a statutory duty imposed for (with or without other objects) the avoidance of danger to the public, it seems sufficient to infer liability that the facts point to the omission as a probable cause of the injury, although other causes might be suggested. Thus where a Railway Company had neglected to erect, as required by statute, a gate or a stile across a public footpath which crossed the railway on the level, the fact of a child of tender years being found on the 'level crossing' with a foot

cut off by a passing train, was held sufficient to infer liability on the part of the Railway Company. *Williams v. G. W. Ry. Co.* L. R. 9 Ex. 157; 43 L. J. Ex. 105.

(C). **Omission to shut gates:**—A Railway crossed a highway at a level crossing where gates were provided on each side for carriages and swing gates for foot passengers, and a watch-box and an attendant to close the gates. A boy came to the crossing and followed a cart on to the line. Then seeing an up-train approaching he waited till it had passed but was caught and killed by a down train, which he might also have seen.—Held, evidence of negligence, the Company being bound by 8 and 9 Vict. C. 20, S. 47 to have the gates closed at the time. *N. E. Ry. Co v. Wanless* 43 L. J. Q. B. 185; 30 L. T. 275; *Marfell v. S. Wales Ry. Co.* 8 C. B. (N. S.) 525, 29 L. J. P. C. 35.

Under S. 9 of the Railway Regulation Act, 1842, from which cls. C. & D. of this section are adapted, an obligation is imposed upon the company to keep the gates closed against the cattle whether straying or passing. *Fawcett v. York & N. Midland Ry. Co.* 16 Q. B. 610; but see *Clark v. North British Railway Co.* (1912) Session Cases Scotland I. where it was held that there was no duty on the railway Company either to shut the gate or to give warning before beginning to shunt the wagons.

(D). **Private Railway Gates:**—The provisions of 5 & 6 Vict. C. 55, S. 9, as to making and maintaining gates where a Railway crosses a road on a level, do not apply to a railway belonging to private owners, and not constructed under Parliamentary powers, nor used for the conveyance of passengers. *Matson v. Baird* 3 App. Cas. 1082.

(E) **Gate serving both public and private road:**—A Railway crossed diagonally on a level by a public road and also diagonally by a private road. The gate placed by the company on the side of the Railway on which the roads met, served for both, and was under the control of the company, who placed a gate-keeper in charge thereof. A carman, having occasion to cross the line, asked the gate keeper whether the line was clear and receiving an answer in the affirmative attempted to cross with lorry and two horses, which were run into by a train.—Held, that it was the duty of the gate-keeper placed in charge of the gate, not merely to open it when required for the passage of horses and carriages, but there was an implied duty on him to exercise reasonable caution and discretion in doing so; and that the fact that the private road to the stoneyard was only available by means of the gate serving public road, placed the carman in the same position with respect to the gate-keeper as if he was using the public road and that the Company was therefore liable for the damage occasioned by his negligence. *Lunt v. L. & N. W. Ry. Co.* 35 L. J. Q. B. 105; L. R. I. Q. B. 277.

(F) **Leaving swing gate partially open.**—A Railway intersected a public foot and carriage way upon the level close to a station on the line. At the place of intersection spring carriage gates opened both ways, and there was also a swivel

gate on each side of the line for persons on foot. A return ticket-holder, while crossing the line at this place to reach the passenger station, was killed by an over-due express. At the time of the accident one of the swing gates was partially open and there was no gate-keeper—Held, that this circumstance constituted an invitation to the ticket-holder to cross the line and an evidence of the company's negligence. *Stapley v. L. B. & S. C. Ry. Co.* 35 L. J. Ex. 7; L. R. 1 Ex 21; 11 Jur (N. S.) 954, on the same principle see *Cluke v. Mid. Ry. Co.* 43 L. T. 381.

(G). **Keeping gate open is an invitation to cross:**—Keeping gate open at the level crossing is an invitation to all comers to cross the line and an intimation that it could be crossed with safety, and if an accident happens there on account of the gate being left open, the company would be held liable for negligence. *Bengal Provincial Railway Co. v. Gopi Mohan Singh* 41 Cal. 308, 18 Cal. W. N. 325.

(H) **Opening gates-illegal Act:**—A person coming along the highway at night arrived at the crossing, and finding no person in attendance to open the gates, proceeded to open them himself, and was injured in consequence:—Held that he had no right of action against the company. *Wyatt v. G. W. Ry. Co.* 6 B. & S. 709; 34 L. J. Q. B. 201, and it seems doubtful whether a person finding the gates shut and no one to open them is entitled after a reasonable interval, to open them himself *Ibid* (For penalty see Sec. 124.)

(I) **Delay in opening gates-damages:**—Damages are not recoverable for stoppages and other mere inconveniences incident to the crossing of a public road by a Railway on the level, under the sanction of parliament. A level crossing in such a case is a grievance to be endured without complaint by private persons, from a consideration of the benefit gained by the public. *Caledonian Ry. Co. v. Ogilvey* 2 Macq. II. L. 229. *Wood v. Southbridge Ry.* 16 C. B. (N. S.) 222 but see *Contra* Where plaintiff, a medical man, whose time was of pecuniary value, was while driving along public highway, detained for 20 minutes at a level crossing by the unreasonable and negligent delay of the defendant Railway Company's servants in opening the gates at the crossing:—Held, that the defendants were liable in damages to the plaintiff for such delay. *Boyd v. G. N. Railway.* (1895) 2 Ir. R. 555.

(J). **Duty to post watchman:**—There is no general duty on Railway Companies to place watchman at public footways crossing the Railway on a level, but it depends upon the circumstances of each case whether the omission of such a precaution amounts to negligence on the part of the Company. *Stapley v. L. & N. W. Ry. Co.* 35; L. J. Ex. 3; L. R. I. Ex. 13, 11 Jur (N. S.) 954; but see *Bilbee v. L. B. & S. C. Ry. Co.* 18 C. B. (N. S.) 584; 34 L. J. C. P. 182; 11 Jur (N. S.) 745; 13 L. T. 146. *Hendrie v. Caledonian Ry. Co.* (1909) S. C. 776. et. of Sess. The facts of this case were that a Railway crossed a highway on a level. At the crossing there was a swing gate for foot passengers. It was proved that 100 trains passed this crossing daily, and that there was no attendant at the crossing.

A person in crossing the line at this point, was knocked down and injured by a train; Held, that there was evidence of negligence on the part of the Company.

A Railway line crossed a public footpath. A watchman who was employed by the Railway Company to take charge of the gates and crossing during the day was withdrawn at night. A dead body of a man was found on the line near the level crossing at night, the man having been killed by a train which carried the usual head lights but did not whistle or otherwise give warning of its approach. No evidence was given of the circumstances under which the deceased got on to the line:—Held, there was evidence of negligence on the part of the Company, but there was no evidence to connect such evidence with the accident and that the Railway Company were not liable *Wakelin v. L. & S. W. Ry. Co.* 56 L. J. Q. B. 229; *Coyle v. G. N. Ry. Co.* 20 L. R. Ir. 409; *Wright v. Midland Ry. Co.* 51 L. T. 539; *Davey v. L. & S. W. Ry. Co.* 53 L. J. Q. B. 58; (*Contra, Brown v. G. W. Ry. Co.* 52 L. J. 622), *Dublin, Wicklow & Wexford Ry. Co. v. Slattery* 3 App. Cas. 1155; 39 L. T. 365.

In India the Governor General in Council or the Railway Board may, either by general order or special requisition, require a Railway Company to employ watchman at level crossing.

(K.) **Duty to repair level crossing:**—When a Railway under the power of an Act of Parliament, crosses a highway on the level, it is the duty of the Company to keep the part of the way used by the public in a state of repair suitable for the ordinary and regular traffic. *Oliver v. N. E. Ry. Co.* 43 L. J. Q. B. 198; L. R. 9 Q. B. 409. *Bell v. Caledonian Ry.* 4 F. 431. ct. of Sess.

"Both on principle and on authority" Railway Companies ought of right to be bound to repair and keep in repair the highways over level crossings including the approaches on either side thereof lying outside the gates of the level crossings. *Hertfordshire County Council v. G. E. Ry.* (1909) 1 K. B. 361; (*West Lancashire Rural Council. v. L. & Y. Ry. Co.* (1903) 2 K. B. 394 distinguished). The fact that the catch of a gate, which the company is bound to maintain is out of repair is evidence of negligence, if an animal gets on to the line & is injured. *Brooks v. L. & N. W. Ry. Co.* 33 W. R. 167.

Obstruction to right of way by closing a gateway leading across a level crossing:—The defendants closed a gateway leading across a level crossing of their Railway over which there was a public right of way. The plaintiff alleged that by the closing of this gateway, access to his bungalow during the monsoon was completely stopped. He sued to have the gateway re-opened:—It was held that the inconvenience caused to the plaintiff was real and substantial, and that the plaintiff was entitled to the user of the right of way in question and under the circumstances to an injunction against its obstruction, *G. I. P. Ry. Co. v. Navroji Pestonji* 10 Bom. 390; *United Land Co. v. G. E. Ry.* 44 L. J. ch. 685; 33 L. T. 292.

When land is taken by the Government under Act VI of 1857, the land is absolutely vested in the Government under S. 8, free from any right of way previously enjoyed by the public over such land. *In Re Fenwick*, 6 H. L. R. 47; 14 W. R. Cr. 72; Similarly a right of way cannot, by the provisions of Act VI of 1857, continue to exist over land acquired by a Railway Company under that Act with the aid of Government. If however, the Railway Company, by their representation and conduct lay themselves under legal obligation to provide a way, such obligation may be enforced. *Collector of 24 Parganas v. N. C. Ghose* 3 W. R. 27.

Duty towards those using the crossing:—A Company is under no statutory obligation to keep wicket-gates for foot passengers closed, and to employ a man to open and shut them. *Hendrie v. Caledonian Ry. Co.* (1909) S. C. 776; but the section imposes by implication the duty of seeing that the line is reasonably safe whether the gates are open or closed. *Lunt v. L. & N. W. Ry. Co.* 35 L. J. Q. B. 105; *Charman v. S. E. Ry. Co.* 21 Q. B. D. 524.

Effect of notices forbidding persons to cross the line:—When notices have been put up forbidding persons to cross the line, but the company's servants have allowed the notices to be disregarded, such notices are no answer to an action for negligence, but where there is no sufficient evidence of the company's acquiescence in the passenger crossing the line, it is the passenger's own negligence, if he crossed the line, being aware of a bridge provided on purpose for crossing. *Wilby v. Mid. Ry. Co.* 35 L. T. (N. S.) 244 &c. *Wakelin v. L. & S. W. Ry. Co.* (1896) 1 Q. B. 189; *Dublin, Wicklow and Wexford Ry. Co. v. Slattery* L. R. 3 App. Cas. 1155; 39 L. T. 366, *Ellis v. G. W. Ry. Co.* L. R. 9 C. P. 551; 43 L. J. C. P. 304 (In this case the plaintiff had crossed the line against the order of the porter) *Clarke v. Mid. Ry. Co.* 43 L. T. 381; *Rogers v. Rhymney Ry. Co.* 26 L. T. 879 (In this case a lady was knocked down and killed by a passing train, while she was crossing the line by a path at the end of the station, which path the passengers were allowed to use); *Nicholson v. L. & Y. Ry. Co.* 34 L. J. Ex. 84.

Crossing otherwise than by a level crossing:—There is no duty upon a Railway Company acquiescing in persons crossing a portion of its line in no definite track to use care for the protection of those persons. *Harrison v. N. E. Ry. Co.* 29 L. T. 844; *Batchelor v. Fortescue* 11 Q. B. D. 474. C A.; *Tolhausen v. Davies* 58 L. J. Q. B. 98 C. A. If, however, persons are in the habit of crossing a railroad at a particular place, though there is no right of way there, it throws upon the Company the responsibility of taking reasonable precautions in their use of such place. *Barret v. Mid. Ry. Co.* 1 F. & F. 361.

Where no crossing:—Where a passenger travelling by Railway, whose train, from which he had alighted at a junction, was shunted to an unusual siding out of sight from the platform, on a dark night, was killed while crossing the main line.—Held, that although there was no accommodation by a bridge for the passengers, and no servant of the company at hand to direct, the

there was no evidence of positive negligence on the part of the Company. *Falkiner v. Great Southern & Western Ry. Ir. R.* 5 C. L. 213.

Adequate warning:—It is the duty of a railway company to give adequate warning (whistling) of an approaching train. *Jenner v. S. E. Railway Co.* (1911) 27 T. L. R. 445.

Negligent whistling—blowing off steam at level crossing:—Where a railway crosses a highway on a level at a place, where there is considerable traffic, the fact of the engine driver blowing off steam from the mudcocks at that spot, so as to frighten horses waiting to pass over the line, is sufficient to warrant the conclusion that the company has been guilty of actionable negligence. *Manchester South Junction Ry. v. Fullarton* 14 C. B. (N. S.) 54. A prolonged and loud whistle on a railway adjoining a highway might, under certain circumstances, such as proof that there was no necessity to whistle, render the railway company liable, if, in consequence, a horse was frightened and damage resulted. *Glaney v. Glasgow & S. W. Railway Co.* (1898) 35 Sc. L. R. 462.

14. (1) Where a railway administration has constructed a railway across a public road on the level, the Governor General in Council may at any time, if it appears to him necessary for the public safety, require the railway administration, within such time as he thinks fit, to carry the road either under or over the railway by means of a bridge or arch, with convenient ascents and descents and other convenient approaches, instead of crossing the road on the level, or to execute such other works as, in the circumstances of the case, may appear to the Governor General in Council to be best adapted for removing or diminishing the danger arising from the level-crossing.

(2) The Governor General in Council may require as a condition of making a requisition under sub-section (1), that the local authority, if any, which maintains the road, shall undertake to pay the whole of the cost to the railway administration of complying with the requisition or such portion of the cost as the Governor General in Council thinks just.

Sub-Section 1 is adapted from S. 7 of the Railway Clauses Act, 1863 (26 and 27 Vict. c. 92) and see also S. 46 of the Railway clauses Act, 1845 (8 & 9 Vict. C. 20). As regards Sub-Section 2. See S. 46 of the Railway Clauses Act, 1845, (8 & 9 Vict. C. 20) and S. 16 of the Railway and Canal Traffic Act, 1888 (51 and 52 Vict. C. 25).

Nature and Scope of the Section:—The Section does not throw upon the Company the burden of maintaining the road or other works which it may be called

upon to construct. It reserves to the G. G. in Council power to require, as a condition of an order being made on a Railway Administration for the construction of works at a level crossing that the local authority, if any, which maintains the road crossed on the level shall undertake to pay the whole or a fair share of the cost of the works (See Statement of Objects and Reasons). It applies to cases where a railway has already been constructed across a road.

Delegation of powers of G. G. in Council to Railway Board:—See Secs. 4 & 7 pp. 12 & 16 and S. 144 Post.

Local authority:—For definition See Sec. 3 (7) of the Indian Telegraph Act, XIII of 1885 and Secs. 3 (28) and 4 (2) of the General Clauses Act X of 1897. See also p. 28.

English Law:—Sec. 7 of the Railway Clauses Act, 1863, provides that The Board of Trade may, if it appears to them necessary for the public safety, at any time after the passing of the Special Act, require the Company, within such time as the Board of Trade directs, and at the expense of the Company, to carry the turnpike road or public carriage road either under or over the Railway by means of a bridge or arch, instead of crossing the same on the level, or to execute such other works as, under the circumstances of the case, may appear to the Board of Trade best adapted for removing or diminishing the danger arising from the level crossing.

Sec. 46 of The Railway Clauses Act, 1845, (8 & 9 Vict. C. 20)—*Provides as follows:*—"If the line of the Railway cross any turnpike road or public highway, then (except where otherwise provided by the Special Act) either such road shall be carried over the Railway, or the Railway shall be carried over such road, by means of a bridge of the height and width, and with the ascent or descent, by this or the Special Act in that behalf provided. And such bridge, with the immediate approaches and all other necessary works connected therewith, shall be executed, and at all times thereafter maintained, at the expense of the Company, Provided always, that, with the consent of two or more Justices in petty sessions, as after mentioned, it shall be lawful for the Company to carry the railway across any highway, other than a public carriage road, on the level."

Mandamus to Construct. (A) Company's Option:—Under the Railway Clauses Act, 1845, S. 46 a railway has the option, when its line of railway crosses a turnpike road or a public highway (except when otherwise provided by the Special Act), either to carry the road over the railway or the railway over the road. A mandamus to command a Company to do one of these two things is therefore defective unless it shows on the face of it circumstances which establish the impossibility of the company exercising this option *Reg. v. S. E. Ry. Co.* 4 H. L. cas 471; 17 Jur 931; Affirming 17 Q. B. 488, 20 L. J. Q. B. 428.

Default in making substituted road:—Where a highway is abandoned by the public, an injunction against obstructing it without substitution may

refused to a plaintiff who wishes to use it for private purposes. *Freeman v. Tottenham & Hampstead Junc. Ry. Co.* 11 L. T. 702. If a Co. does not properly construct the required substituted road, the highway authorities are not justified in obstructing the passage of the road, but should apply for a mandamus to compel the company to carry out the statutory requirements. *London & Brighton Ry. Co. v. Blake* 2 Ry. & Can. Cas. 322.

Company may divert if road convenient:—A company may permanently divert a road to a place where there is an authorized level crossing, provided the road so diverted is more convenient than the old road crossing by a bridge. *A. G. v. Ely Haddenham & Sutton Ry. Co.* 4 Ch. app. 194.

A substituted road should be as wide as the road interfered with. *R. v. Birmingham & Gloucester Ry. Co.* 2 Q. B. 47.

(B). When company without funds:—A mandamus will not lie to compel a railway company to construct a bridge in lieu of a level crossing pursuant to an order of the Board of Trade, when it appears that the company is wholly without funds, and has not the means of providing the money required for that purpose. *Bristol & North Somerset Ry. Co. In Re.* 47 L. J. Q. B. 48; 3 Q. B. D. 10.

Bridge or arch:—A Railway Company, in exercise of the powers conferred on it by an Act of Parliament, which gave compensation to persons whose property might sustain damage from their operation, was proceeding to erect an arch over a mill race, for the purpose of sustaining an embankment, on which the railway was to be constructed; and it appeared that the injury would be done to the mill, if the arch were of certain larger dimensions, an injunction was granted to restrain the company from making over the mill race an arch of less than certain specified dimensions. *Coates v. Clarence Ry.* 1 Rus & M. 181; 8 L. J. Ch. 72; *Aldred v. North Mid Ry.* 1 Railw. Cas. 404; 3 Jur. 244.

Bridge is a Building:—The word includes such works, e. g. approaches, as are necessary to restore complete communication. *Addie's Trustees v. Cal. Ry. Co.* (1906) Sc. Sess. Cas. 1047. See *Lloyd v. L. C. & D. Ry.* 34 L. J. Ch. 401.

Obligation to build bridge—Level crossing on embankment:—Sec. 46 of the Railway Clauses Act, 1845, imposes no obligation on a railway company to carry a public footpath by means of a bridge over a railway on an embankment in a case where such footpath crosses the railway on a level. *Reg. v. Buxley Heath Ry.* 65 L. J. Q. B. 469; (1896); 2 Q. B. 74.

Obligation to repair over-bridges:—Under S. 46 of the Railway Clauses Act, 1845, a railway company having carried a highway over the Railway by a bridge, is bound to keep both bridge and road, and all the approaches thereto, in repair; and such repair includes not only the structure of the bridge and the appro-

aches but the metalling of the road on both. *North Staffordshire Ry. Co. v. Dale* 27 L. J. M. C. 147; 3 Jur (N. S.) 631; *L. & Y. Ry. Co. v. Bury Corporation* 59 L. J. Q. B. 35; 14 App. Cas. 417. *Lay v. Mid Ry. Co.* 30 L. T. 529. It is also bound to maintain that bridge in a condition of safety for the passage of all traffic which may be reasonably expected to traverse the highway. If heavy motor traffic may be expected on the highway, the Railway Co is bound to keep the bridge strong enough to carry that traffic. *Att. Gen v. Great Northern Ry. Co.* 83 L. J. (Ch) 763; (1911) W. N. 246; 30 T. L. R. 557. (The roadway upon the bridge is considered a part of the bridge); *North of England Ry. v. Langbaurgh* 24 L. T. 544. *Leech v. M. Staffordshire Ry.* 29 L. J. M. C. 150. But a railway company which in carrying a railway over a highway by a bridge, lowered the level of the highway, is not bound to keep the slope of the road in repair, as being part of the approaches on each side of the bridge. *L. & N. W. Ry. Co. v. Sherton* 5 B. & S. 595; 33 L. J. M. C. 158; 10 L. T. 648. (But see *Hertfordshire County Council v. G. E. Ry.* Supra).

Provisions relating to repair of approaches not retrospective:—The provisions of the Railway Clauses Act, relating to the repair of approaches to bridges are not retrospective. *Taff Vale Ry. v. Davies.* 19 L. T. 278.

Footpath-obligation to carry:—S. 46 of the Railway Clauses Act 1845, does not impose upon a railway company whose line crosses a public footpath, the obligation of carrying the footpath over the railway or the railway over a footpath by means of a bridge. A footpath is not a road within the meaning of this section. *Dartford Rural. Dist. Council v. Buxley Heath railway Co.* H. L. (E) (1828) App. Cas. 410; 67 L. J. Q. B. 231. *Reg. v. South Eastern Railway Co.* 4 H. L. cas 471; *Breynton v. L. & N. W. Railway Co.* Beav 238.

15. (1) In either of the following cases, namely:—

Removal of trees dangerous to or obstructing the working of a railway.

(a) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic.

(b) when a tree obstructs the view of any fixed signal, the railway administration may, with the permission of any Magistrate, fell the tree or deal with it in such other manner as will in the opinion of the railway administration avert the danger or remove the obstruction, as the case may be.

(2) In case of emergency the power mentioned in sub-section (1) may be exercised by a railway administration without the permission of a Magistrate.

(3) Where a tree felled or otherwise dealt with under sub-section (1) or sub-section (2) was in existence before the railway

is now considerably narrowed down with the Railway Fires Act, V of 1905 Ed. VII C. 11 which has come into force in England from 1 Jan'y. 1908. Again in *London & Brighton Railway Co. v. Truman*. 11 App. Cas. at P. 61 Lord Blackburn observes "I do not think that if the company failed either in the fulfilment of the common law duty of taking proper care in the management of the traffic, which is, what is in common language called negligence, or neglected any duty that, on the construction of the whole Act, it appears, was cast upon them which in a more technical sense is also included in the word "Negligence," they are freed from an injunction.

If it be held that leaving grass a foot high along the line of railway is such negligence as would render the railway company responsible for damage occasioned by fire, it would, in this country, be equivalent to imposing upon them an impossibility namely, the duty of keeping the banks of their line trimmed like a lawn, or altogether preventing vegetation thereon. The imposition upon them of such a liability as that was not intended by the legislature, which gave them power and authority to run trains and locomotive engines. The company cannot therefore be held guilty of negligence so far as relates to the condition of the railway banks. *Halford v. E. I. Railway Co.* 14 B. L. R. 1.

Onus-Fire from sparks:—The fact of premises being fired by sparks emitted from a passing engine, is *prima facie* evidence of negligence on the part of the company, rendering it incumbent on it to show that some precaution had been adopted by the company reasonably calculated to prevent such accident. *Piggot v. Eastern Counties Ry. Co.* 3 C. B. 229; 15 L. J. C. P. 235; *Gibson v. S. E. Ry. Co.* 1 F. & F. 23;—*Contra-Port Glasgow & Newark Salt Cloth Co. v. Caledonian Ry. Co.* (1893) H. L. W. N. 29, wherein, it was held that the onus lay on the appellants to show that the railway company were guilty of negligence.

Evidence of defendant company's other engines throwing sparks to sufficient distance admissible:—In an action against a railway company for so negligently managing and conducting an engine that the premises of the plaintiff adjoining the line were destroyed by fire emitted from the engine, evidence is admissible for the purpose of showing that other engines belonging to the company, upon other occasions, in passing along the line, threw sparks or ignited matter to a sufficient distance to reach the premises, without showing the precise circumstances under which this occurred. *Piggot v. Eastern Counties Ry.* 3 C. B. 229.

The frequent occurrences of such cases led to the passing of the Railway Fires Act, (1905) which may be referred to here with advantage.

Railway Fires Act.

CHAPTER II.

An Act to give compensation for damage by fires caused by sparks or cinders from railway engines

(4th August 1905).

Extent of duty with regard to construction of locomotive:—The railway company is "bound to use the best practicable means, according to the then state of knowledge to avoid the emission of sparks which may be dangerous to adjoining property" per Lord Herschell in *Port Glasgow & Newyork Sailcloth Co. v. Caledonian Railway Co.* 1893, 20 Sc. Sees. Cas. 35.

In a case where it was found on the evidence that the use of a grid or spark-arrester would have minimised the emission of large particles from the funnel of the locomotive, but that the increased blast which the use of a grid would have necessitated would have increased the emission of smaller particles, the Court held that the railway company was not negligent in not using a spark-arrester. *Earl of shaftsbury v. L. & S. W. Ry. Co.* 11 T. L. R. 126, 169 (C. A.)

Rules made &c:—Means Rules made in accordance with S. 47. *Infra.*

Damage by Sparks from Engine:—Unless a railway company have express statutable power to use locomotive engines it will be liable for damage done by fire proceeding from them, even though there be no negligence on the part of the company. *Jones v. Festiniog Ry. Co.* L. R. 3 Q. B. 733. *National Telephone Co. v. Baker.* (1893) 2 ch. 186; 62. L. J. ch. 699, A railway company authorised by the Legislature to use locomotive engines, is not responsible for damage from fire occasioned by sparks emitted from an engine travelling on the railway provided the company has taken every precaution in its power, and adopted every means which science can suggest, to prevent injury from fire, and is not guilty of negligence in the management of the engine. *Chief Justice Cockburn observed:*—"Where the Legislature has sanctioned and authorized the use of a particular thing, and it is used for the purpose for which it was authorised, and every precaution has been observed to prevent injury, the sanction of the Legislature carries with it this consequence, that if damage result from the use of such thing, independently of negligence, the person using it is not responsible. *Vaughan v. Taff Vale Ry. Co.* 29 L. J. Ex. 247, 5 H. & N. 679; *Dimmock v. North Staffordshire Ry.* 4 F. & F. 1058; *Longman v. Grand Junction Canal.* 3 F. & F. 736, *Madras Mail Co. v. Zemindar of Carvatinagaram.* L. R. 1 Ind. App. 384; *Canadian Pacific Ry. Co. v. Roy* L. R. H. L. 220 (1902); *Smith v. L. & S. W. Ry. Co.* L. R. 6 C. P. 14. *Smith v. L. & N. W. Ry. Co.* L. R. 5 C. P. 98 at p. 106. Leaving dry grass on the side of the line, which ignited is evidence of negligence on the part of the railway. *Geddis v. Proprietors of Bann Reservoir* 3 App. Cas. 430; In the latter case at page 455 Lord Blackburn thus lays down the law:—"It is now thoroughly well established that no action will lie for doing that which the Legislature has authorised, if it be done without negligence, although it does occasion damage to any one; but an action does lie for doing that which the legislature has authorised, if it be done negligently. And I think that if by a reasonable exercise of the powers, either given by statute to the promoters, or which they have at common law, the damage could be prevented, it is, within this rule, 'negligence' not to make such reasonable exercise of the powers. The effect of the above decisions

is now considerably narrowed down with the Railway Fires Act, V of 1905 Ed. VII C. 11 which has come into force in England from 1 Jany. 1908. Again in *London & Brighton Railway Co. v. Truman*. 11 App. Cas. at P. 61 Lord Blackburn observes "I do not think that if the company failed either in the fulfilment of the common law duty of taking proper care in the management of the traffic, which is, what is in common language called negligence, or neglected any duty that, on the construction of the whole Act, it appears, was cast upon them which in a more technical sense is also included in the word "Negligence," they are freed from an injunction.

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Railway Fires Act.

CHAPTER II.

An Act to give compensation for damage by fires caused by sparks or cinders from railway engines.

(4th August 1905).

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

- (1). When after this Act comes into operation, damage is caused to agricultural land or to agricultural crops, as in this Act defined, by fire arising from sparks or cinders emitted from any locomotive engine used on a railway, the fact that the Engine was used under statutory powers shall not affect liability in an action for such damage.
- (2). Where any such damage has been caused through the use of an engine by one company on a railway worked by another company, either company shall be liable in such an action, but, if the action is brought against the company working the railway that company shall be entitled to be indemnified in respect of their liability by the company by whom the engine was used.
- (3). This section shall not apply in the case of any action for damage unless the claim for damage in the action does not exceed one hundred pounds.
- (1). A railway company may enter on any land and do all things reasonably necessary for the purpose of extinguishing or arresting the spread of any fire caused by sparks or cinders emitted from any locomotive engine.
- (2). A railway company may, for the purpose of preventing or diminishing the risk of fire in a plantation, wood, or orchard through sparks or cinders emitted from any locomotive engine, enter upon any part of the plantation, wood, or orchard, or on any land adjoining thereto, and cut down and clear away any undergrowth, and take any other precautions reasonably necessary for the purpose; but they shall not, without the consent of the owner of the plantation, wood, or orchard, cut down or injure any trees, bushes or shrubs.
- (3). A railway company exercising powers under this Section shall pay full compensation to any person injuriously affected by the exercise of those powers, including compensation in respect of loss of annuity; and any compensation so payable shall, in case of difference, be determined in England and Ireland by two Justices in manner provided by Sec. 24 of the Land Clauses Consolidation Act, 1845, and in Scotland by the Sheriff in manner provided by Sec. 22, of the Land Clauses Consolidation (Scotland) Act, 1845. This act shall not apply in the case of any action for damage by fire brought against any railway company unless notice of claim and particulars of damage, in writing, shall have been sent to the said railway company within seven days of the occurrence of the damage as regards the notice of claim, and within fourteen days as regards the particulars of damage.

- (4) In this Act:—The expression "agricultural land" includes arable and meadow land and ground used for pastoral purposes or for market or nursery gardens, and plantations and woods and orchards, and also includes any fences on such land but does not include any moorland or buildings; The expression "agricultural crop" includes any crops on agricultural land, whether growing or severed which are not led or stacked; The expression "railway" includes any light railway and any Tramway worked by steam power.

This Act shall apply to agricultural land under the management of the Commissioners of Woods, and to agricultural crops thereon.

- (5) This Act shall come into operation on the first day of January one thousand nine hundred and eight, and may be cited as the *Railway Fires Act 1905*.

Liability for nuisance caused by working of railways—Frightening of horses &c:—On the same principle as the one enunciated above a railway company would not be held liable when horses are frightened by locomotives running on railways constructed under the parliamentary powers. Where the Legislature has authorised a railway company to lay down a railway alongside a public highway, it must be presumed to have contemplated the possibility that the railway would be a nuisance to persons using the highway, and that such persons must submit to the inconveniences necessarily resulting, from the working of the railway. *Ree v. Pease* 4 B. and Ad. 22. *The Hammersmith Railway Co. v. Brand*. L. R. 4 H. L. 171. (The nuisance in this case—vibration—was one which was unavoidable, and must necessarily be caused if the railway was to be used at all, and trains were to run on it with locomotives). However, in *Raj Mohan Bose v. E. I. Ry. Co.* 10 B. L. R. 241, it was held that having workshops, furnaces, and forges as complained of, may in itself be proper and be within the powers of the defendant company; but it does not follow that they are entitled to have their workshops, furnaces and forges in such a place, or to use them in such a manner as to constitute a nuisance to their neighbours. But the judgment of this case must be read by the light of other decisions of the House of Lords. In *London Brighton & S. C. Railway Co. v. Truman* 11 App. Cas. 45 wherein it was held by the House of Lords that the purpose for which the land was acquired being expressly authorised by the Act, and being incidental and necessary to the authorised use of the railway for the cattle traffic, the company were authorised to do what they did and were not bound to choose a site more convenient to other persons; and that the adjoining occupiers were not entitled to an injunction. But to blow off steam at a level crossing so as to frighten horses waiting to pass over the line amounts to an actionable negligence. *M. S. Junction Ry. Co. v. Fullarton* 14 C. B. 54.

17. (1) Subject to the provisions of sub-Section (2), a railway administration shall one month at least before it intends to open any railway for public carriage of passengers, give to the Governor General in Council notice in writing of its intention.

Notice of intended opening of a railway.

(2) The Governor General in Council may, in any case, if he thinks fit, reduce the period of, or dispense with, the notice mentioned in sub-section (1).

Application of the Section:—This Section applies only in cases where the railway administration intends to open any railway for the public carriage of passengers.

Right to use locomotives—See Sec. 16. p. 63.

Opening a Railway:—A railway shall not be opened for passenger traffic until a sanction has been previously obtained for that purpose.—See sec. 18.

Procedure in opening:—For procedure in sanctioning the opening of a railway:—See sec. 19

When Sanction may be refused:—See sec. 19 (2).

Month:—"Month" means a month reckoned according to the British Calendar:—See secs. 3 (33) and 4 (1) of the General Clauses Act, X of 1897.

Mode of service of notices.—See secs. 140 and 141. *infra*.

Material alterations of a railway:—The provisions of Secs. 17, 18, and 19 with respect to the opening of a railway apply to certain alterations, deviations or reconstructions materially affecting the structural character of any existing work. See Sec. 20.

18. A railway shall not be opened for the public carriage of passengers until the Governor General in Council or an Inspector empowered by the Governor General in Council in this behalf, has by order sanctioned the opening thereof for that purpose,

Sanction of the Government, a condition precedent to the opening of a railway.

Procedure as to opening of railways:—See Secs. 17 and 19 and as to alterations, and additions &c. See Sec. 20.

Duties and powers of Inspectors:—See Secs. 4 and 5. pp. 12 and 13.

19. (1) The sanction of the Governor General in Council under the last foregoing section shall not be given until an Inspector has, after inspection of the railway, reported in writing to the Governor General in Council—

Procedure in sanctioning the opening of a railway.

- (a) That he has made a careful inspection of the railway and rolling-stock;
- (b) that the moving and fixed dimensions prescribed by the Governor General in Council have not been infringed;

- (c) that the weight of rails, strength of bridges, general structural character of the works, and the size of and maximum gross load upon the axles of any rolling-stock, are such as have been prescribed by the Governor General in Council;
- (d) that the railway is sufficiently supplied with rolling-stock;
- (e) that general rules for the working of the railway when opened for the public carriage of passengers have been made, sanctioned and published under this Act; and
- (f) that, in his opinion, the railway can be opened for the public carriage of passengers without danger to the public using it.

(2) If in the opinion of the Inspector the railway cannot be opened without danger to the public using it, he shall state that opinion, together with the grounds therefor, to the Governor General in Council, and the Governor General in Council may thereupon order the railway administration to postpone the opening of the railway.

(3) An order under the last foregoing sub-section must set forth the requirements to be complied with as a condition precedent to the opening of the railway being sanctioned, and shall direct the postponement of the opening of the railway until those requirements have been complied with or the Governor General in Council is otherwise satisfied that the railway can be opened without danger to the public using it.

(4) The sanction given under this section may be either absolute or subject to such conditions as the Governor General in Council thinks necessary for the safety of the public.

(5) When sanction for the opening of a railway is given subject to conditions, and the railway administration fails to fulfil those conditions, the sanction shall be deemed to be void and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the Governor General in Council.

As regards sub-Section 1 (c) and Sub-Section 2 See Secs. 16 and 6 of the Railway Regulation Act, 1842 (5 & 6 Vict. C. 55) respectively.

Opening of railways for public carriage of passengers:—In addition to this Section, See Secs. 17 & 18. p. 67 & 68.

Maximum load for wagons—See Sec 53

Decision of the Inspector of Board of Trade Final:—When an inspector of the Board of Trade reports to the Board of Trade that opening of a railway will

be attended with danger to the public by reason of the incompleteness of the works, and gives the grounds of his opinion, the requisitions of the 5 & 6 Vict. C. 55, S. 6. are satisfied. The Board of Trade has exclusive jurisdiction in the matter, and the Court will not enter into the question whether the reasons given by the Inspector do not show on the face of the report that he has come to a wrong conclusion. *Att. Gen. v. G. W. Ry.* 46. L. J. Ch. 192; 35 L. L. 921; *Att. Gen. v. Oxford, Worcester, and Wolverhampton Ry.* 2 W. R. 330.

Incompleteness.—The term “incompleteness” in S. 6 of 5 & 6. Vict. C. 55, includes defectiveness or imperfection generally and such incompleteness may arise from the state of the works upon a neighbouring line with which the Railway in question is connected (*ibid*)

20. (1) The provisions of sections 17, 18 and 19 with respect to the opening of a railway shall extend to the opening of the works mentioned in sub-section (2) when those works form part of, or are directly connected with, a railway used for the public carriage of passengers and have been constructed after the inspection which preceded the first opening of the railway.

Application of the provisions of the three last foregoing sections to material alterations of a railway.

(2) The works referred to in sub-section (1) are additional lines of railway, deviation lines, stations, junctions and crossings on the level, and any alteration or re-construction materially affecting the structural character of any work to which the provisions of sections 17, 18 and 19 apply or are extended by this section.

This Section is adapted from S. 5 of the Regulation of Railways Act, 1871. (34 & 35 Vict. C. 78).

For exceptional provision in cases of repairs necessary through accident.—See Sec. 21.

21. When an accident has occurred resulting in a temporary suspension of traffic, and either the original line and works have been rapidly restored to their original standard, or a temporary diversion has been laid for the purpose of restoring communication, the original line and works so restored, or the temporary diversion, as the case may be, may, in the absence of the Inspector, be opened for the public carriage of passengers, subject to the following conditions, namely:—

Exceptional provision.

(a) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the

opening of the restored line and works or of the temporary diversion, will not in his opinion be attended with danger to the public using the line and works or the diversion; and

- (b) that notice by telegraph of the opening of the line and works or the diversion shall be sent, as soon as may be, to the Inspector appointed for the railway.

Notices of accidents and penalty for failure to give them:—As to giving of notices of accidents See Sec. 83; and for penalty for omitting to give notices of accidents required by Secs. 83 & 84 See Sec. 96, and for omitting to give such notices by a station-master or a railway servant in charge of a section of a railway See Sec. 103; and as to temporary entry upon land for repairing of preventing accident, See Sec. 9.

Penalty:—Sec. 88 provides the penalty for contravention of the terms of this Sec. and Ss. 97 & 98 provide for the recovery of penalties from the railway company.

Scope of Sec. 21:—Provision has been made in this Section for the opening of a railway without the sanction of the G. G. in Council or an Inspector, where there has been an accident resulting in a temporary suspension of traffic, or where works are of so unimportant a character that the application to them of the general law relating to the opening of railways is unnecessary.

22. The Governor General in Council may make rules defining the cases in which, and in those cases the extent to which, the procedure prescribed in sections 17 to 20 (both inclusive) may be dispensed with.

Power to make rules with respect to the opening of railways.

23. (1) When, after inspecting any open railway used for the public carriage of passengers, or any rolling stock used thereon, an Inspector is of opinion that the use of the railway or of any specified rolling-stock will be attended with danger to the public using it, he shall state that opinion, together with the grounds therefor, to the Governor General in Council; and the Governor General in Council may thereupon order that the railway be closed for the public carriage of passengers or that the use of the rolling-stock so specified be discontinued, or that the railway or the rolling-stock so specified be used for the public carriage of passengers on such conditions only as the Governor General in Council may consider necessary for the safety of the public.

Power to close an opened railway.

(2). An order under sub-section (1) must set forth the grounds on which it is founded.

Clause 2 is adapted from S. 16 of the Railway Regulation Act, 1842 (5 & 6 Vict.C.55).

24. (1) When a railway has been closed under the last foregoing section, it shall not be re-opened for the public carriage of passengers until it has been inspected and its re-opening sanctioned, in accordance with the provisions of this Act.

Re-opening of a closed railway

(2) When the Governor General in Council has ordered under the last foregoing section that the use of any specified rolling-stock be discontinued, that rolling-stock shall not be used until an Inspector has reported that it is fit for use and the Governor General in Council has sanctioned its use.

(3) When the Governor General in Council has imposed under the last foregoing section any conditions with respect to the use of any railway or rolling-stock those conditions shall be observed until they are withdrawn by the Governor General in Council.

25. (1) The Governor General in Council may, by general or special order, authorize the discharge of any of his functions under this Chapter by an Inspector, and may cancel any sanction or order given by an Inspector, discharging any such function or attach thereto any condition which the Governor General in Council might have imposed if the sanction or order had been given by himself.

(2) A condition imposed under sub-section (1) shall for all the purposes of this Act have the same effect as if it were attached to a sanction or order given by the Governor General in Council,

CHAPTER V.

RAILWAY COMMISSIONS AND TRAFFIC FACILITIES.

Railway Commissions

26. (1) For the purposes of this Chapter the Governor General in Council shall, as occasion may in his opinion require, appoint a Commission, styled a Railway Commission (in this act referred to as the Commissioners) and consisting of one Law Commissioner and two Lay Commissioners.

Constitution of Railway Commission.

(2) The Commissioners shall sit at such times and in such places as the Governor General in Council appoints.

(3) The Law Commissioner shall be such Judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882, in the place where the Commissioners are to sit as, in the case of a High Court established under the Statute 24 and 25 Victoria, Chapter 104, the Chief Justice or, in the case of the chief court of Lower Burma, the chief Judge may, on the request of the Governor General in Council assign by writing under his hand.

(4) The Lay Commissioners shall be appointed by the Governor General in Council, and one at least of them shall be of experience in railway business.

For Sub-Section (1) See Sec. 4 of the Regulation of Railways Act, 1873 (36 & 37 Vict. 48), S. 2 of The Railway and Canal Traffic Act, 1888 (51 & 52 Vict. C. 25), and S. 3 of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. C. 31).

For Sub-Section (2) See Sec. 5 (1) of the Railway and canal Traffic Act, 1888 (51 & 52 Vict. C. 25).

For Sub-Section (3) See S. 4 (1) and (2) of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. C. 25).

For Sub-Section (4) See S. 4 of the Regulation of Railways Act, 1873 (36 & 37 Vict. C. 48) and S. 3 (1) and (2) of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. C. 25).

Object of the Chapter :—" Closely following the law in England, the chapter imposes on railway administration the general duty of arranging to receive, forward and deliver traffic, without unreasonable delay, and without partiality or undue preference, and the special duty of so treating through traffic at through rates. If the G. G. in Council is satisfied that any person has just ground of complaint against a railway administration for breach of either duty, he may refer the case to a Railway Commission for decision. Such a Commission is to be appointed only when there are cases to be referred to it, and it will be deemed to be dissolved as soon as it has decided those cases. It is to consist of a Law Commissioner who is to be a Judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882, in the place where the G. G. in Council has ordered the Commission to sit, and of two Lay Commissioners, of whom one must be an expert in railway business, and one may be a representative of the Mercantile community, or any other person whom the G. G. in Council sees fit to appoint. The commission so constituted may, in any case re-

ferred to it, make any order by way of injunction, which may in the circumstances appear to the Commissioners to be suitable. If two of the commissioners concur upon a question of fact, their decision on that question is to be *conclusive*. From other decisions of the Commissioners, an appeal will lie to a bench of not less than three Judges of the High Court of which the Law Commissioner was a member, or from a decision of a Railway Commission in Burmah, to such a bench of the High Court of Judicature at Fort William in Bengal—(Statements of Objects & Reasons).

When a Commission to be appointed:—The Act leaves it entirely to the discretion of the G. G. in Council to decide upon the occasions when, if ever, a railway Commission is to be appointed.

European British Subjects:—Means (1) any subject of His Majesty born, naturalised, or domiciled in the United Kingdom of Great Britain, and Ireland or in any of the European, American or Australian Colonies or Possessions of His Majesty or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal. (2) Any child or grand-child of any such person by legitimate descent.

Restriction of jurisdiction of Railway Commission to cases specially referred.

27. The Commissioners shall take cognizance of such cases only as are referred to them by the Governor General in Council.

Note;—With this read Sections 28, 29 and 30.

Reference of cases to Railway Commission

28. In any of the following circumstances namely:—

(a) Where complaint is made to the Governor General in Council of anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter;

(b) where any difference which is under the provisions of any agreement required or authorized to be referred to arbitration arises between railway administrations, and the railway administrations apply to the Governor General in Council to have it referred to the Commissioners;

(c) Where any other difference, being a difference between railway administrations or one to which a railway administration is a party, arises, and the parties thereto apply to the Governor General in Council to have it referred to the Commissioners, the Governor General in Council may, if he thinks fit, refer the case to the Commissioners for decision.

Clauses A, B. & C of this Section are adapted from Ss. 6, 8 & 9 respectively of the Regulation of Railways Act, 1873. (36 & 37 Vict. C. 48).

29. The three Commissioners shall attend at the hearing of any case referred to them for decision under this Chapter, and the Law Commissioner shall preside at the hearing.

Constitution of
Railway Commis-
sion in session.

This section is adapted from S. 5 (3) of the Railway and Canal Traffic Act, 1888.

30. (1) In hearing any such case the Commissioners shall have the powers which may be exercised in the hearing of an original civil suit by a High Court.

Powers of Rail-
way Commission.

(2) The decision shall, if the Commissioners differ in opinion, be in accordance with the opinion of the majority, and the final order in the case shall be by way of injunction and not otherwise.

(3) At the hearing the commissioners may permit any party to appear before them either by himself or by any legal practitioner entitled to practise in any High Court.

For Clauses 2; & 3, Sec. Ss. 5. (3) and 50 of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. C. 25).

Injunctions:—

(A) *Temporary*, See O. XXXIX rules 1 to 5 and S. 95 of the Code of Civil Procedure, Act V. of 1908.

(B) *Perpetual*, See Ss. 52 to 57 of the Specific Relief Act, 1 of 1877.

(C) *Mandatory*, See S. 55 (Ibid).

When Injunctions will and will not be granted:—See Ss. 42 & 43 of this Act.

General rules governing grant of reliefs:—General rules governing the grant of reliefs are:—(1) The applicant must shew a fair *prima facie* case in support of the right claimed; and (2) actual or threatened violation of that right; (3) productive of irreparable or at least serious damage. So, a temporary injunction will not be granted to restrain a wrong which is a mere technical invasion of the plaintiff's rights, and does not threaten serious injury. A court will not grant an injunction, unless real injury is apprehended. (4) There must be a greater convenience in granting than in refusing the injunction.

Agreement to work another line-injunction :—A railway Company which had agreed to work the line of another railway, and during the continuance of the agreement to develop and accommodate the local and through traffic thereon, and to carry over it certain traffic particularly specified, was restrained by injunction from carrying over other lines belonging to them traffic which ought to have passed over the plaintiff's line. *Wolverhampton & Walsall Ry. Co. v. London & N. W. Ry. Co* L. R. 16 Eq. 127.

31. (1) An appeal shall not lie from any order of the Commissioners upon any question of fact on which two of the Commissioners are agreed.

Appeals from orders of
Railway Commission.

(2) Subject to the provisions of sub-section (1) an appeal shall lie from an order of the Commissioners to the High Court of which the Law Commissioner was a member. (*amended by Act XVIII of 1919.*)

(3) Such an appeal must be presented within six months from the date of the order appealed from, and shall be heard by a bench of as many Judges, not being fewer than three, as the High Court may by rule prescribe.

(4) In the hearing of the appeal the High Court shall, subject to the other provisions of this Chapter, have all the powers which it has as an Appellate Court under the Code of Civil Procedure, and may make any order which the Commissioners could have made.

Orders how executed :—See S. 36. *infra*

32. Notwithstanding any appeal to the High Court from an order of the Commissioners, the order shall, unless the Commissioners or the majority of them see fit to suspend it, continue in operation until it is reversed or varied by that Court.

Operation of
orders of Railway
Commission.

33. (1) The Commissioners, in the exercise of their jurisdiction under this Chapter, may, from time to time, with the general or special sanction of the Governor General in Council, call in one or more persons of engineering or other technical knowledge to act as assessors.

Assessor.

(2) There shall be paid to such persons such remuneration

as the Governor General in Council upon the recommendation of the Commissioners may direct.

34. The Governor General in Council may make rules regulating proceedings before the Commissioners and enabling the Commissioners to carry into effect the provisions of this Chapter, and prescribing fees to be taken in relation to proceedings before the Commissioners.

Power of the Governor General in Council to make rules for the purposes of this Chapter.

Rules.—As regards rules made under this Section see, Govt. of India. Notif.—No. 373 of 25th Oct. 1902.

Publication of rules.—See S. 143.

35. The costs of and incidental to any proceedings before the Commissioners or the High Court under this Chapter shall be in the discretion of the Commissioners or the High Court, as the case may be, and the payment of costs awarded by the Commissioners may be enforced by the Court of which the Law Commissioner was a Judge as if the payment had been ordered by a decree of a High Court.

Costs of proceedings under this Chapter.

36. (1) The Court of which the Law Commissioner was a Judge may, if it appears on the application of any person who was a party to the proceedings before the Commissioners or on appeal before the High Court, or of the representative of any such person that an injunction made under this Chapter by the Commissioners or by a High Court has not been obeyed by the party enjoined, order such party to pay a sum not exceeding one thousand rupees for every day during which the injunction is disobeyed after the date of the order directing such payment.

Execution of order of Railway Commission and High Court.

(2) The payment of such sum may be enforced by the Court which made the order as if that Court had given a decree for the same, and the Court may direct that the whole or any part of the sum shall be paid to the person making the application under subsection (1) or to the Government.

This Section is adapted from S. 8 of the Railway and Canal Traffic Act, 1845 (17 & 18 Vict. C. 31).

What materials or effects of railway administration cannot be taken in execution.—See Sec. 136 post.

37. A document purporting to be signed by the Commissioners, or any of them, shall be received in evidence without proof of the signature, and shall, until the contrary is proved, be deemed to have been so signed and to have been duly executed or issued by the Commissioners.

Evidence of documents.

Evidence of Documents:—See Ss. 74, 76, 77 and 82 of the Evidence Act I of 1872.

38. The Commissioners shall, as soon as may be after the disposal of each case referred to them, submit to the Governor General in Council a special report on the case, and the Governor General in Council shall cause the report to be published in such manner as he thinks fit for the information of persons interested in the subject matter thereof.

Submission to the Governor General in Council of special reports by Railway Commission.

Dissolution of Railway Commission:—See S. 39 infra.

Review of decision:—See S. 39 (Proviso).

39. Except for the purpose of the last foregoing section, a Railway Commission shall be deemed to be dissolved at the close of the last of the sittings of the Commissioners for the decision of the cases referred to them.

Dissolution of Railway Commission.

Provided that, on the application of any person who was a party to the proceedings before the Commissioners, or of the representative of any such person, the Governor General in Council may, if he thinks fit, in any case in which the order passed by the Commissioners is not open to appeal, re-appoint the Commissioners for the purpose of hearing an application for a review of their decision and of granting the same and re-hearing the case if they think that the case should be re-heard.

40. Subject to the foregoing provisions of this Chapter and to any direction of His Majesty in Council, an order of the Commissioners shall be final and shall not be questioned in or restrained by any Court.

Finality of orders of Railway Commission subject to the foregoing provisions of this Chapter.

41. Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter or of any order made thereunder by the Commissioners or by a High Court.

Bar of Jurisdiction of ordinary Courts in certain matters cognizable by Railway Commission.

Notes:—A similar provision will be found in S. 6 of the Railway and Canal Traffic Act, 1844, (17 & 18 Vict. C. 31) which is cited here for reference.

S. 6—"No proceeding shall be taken for any violation or contravention of the above enactments, except in the manner herein provided; But nothing herein contained shall take away or diminish any rights, remedies or privileges of any person or company against any railway or canal or railway and canal company under the existing law."

Scope of the Section:—In case any act is done or any omission is made by a Railway administration in violation or contravention of any of the provisions of chapter V &c, the remedy lies in making a complaint to the G.G. in Council, who may refer the case to the Commissioners for decision. So S. 6 of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. C. 31) enacted that no proceeding should be taken for any violation or contravention of that Act, except in the manner therein provided but that nothing therein contained should take away or diminish any rights, remedies or privileges of any person or company against any railway or canal or railway and canal company under the existing law.

Civil Court has no Jurisdiction to try the question whether reserved accommodation was properly made:—A Civil Court has no jurisdiction under this section to try the question whether a railway administration can reserve accommodation for Europeans and Anglo-Indians on a railway train. The proper remedy for the person aggrieved is to prefer a complaint to the Gov. General in Council under section 28 of the Railways Act. *Vishvanath v. G.I.P. Railway* (1921) 23 Bom. L. R. 809.

Suit does not lie to recover terminal charges:—Under Ss. 41, 45 and 46 of Act IX of 1890, the High Court has no jurisdiction to consider or entertain a claim relating to terminals charged by the defendant company. *Lalji Bhai Shamji v. G. I. P. Ry. Co.* 15 Bom. 537.

Demurrage charges:—Demurrage charges are those that are levied for warehousing goods, which are not taken delivery of within the prescribed time and the defendant company is bound to warehouse as involuntary agent of the consignee. *Surajmal v. E. I. Ry. Co.* 16 Cal W. N. 359.

What cases may be referred to the Commissioners:—See S. 28.

Final orders:—The Decision shall be in accordance with the opinion of the Majority of the Commissioners and the final order in the case shall be by way of injunction only:—See S. 30.

English Law:—No action can be maintained:—No action can be maintained for a breach of S. 2 of the Railway and canal Traffic Act, 1854 which corresponds with S. 42 (1), (2) and (3) of Act IX of 1890 and the only remedy is by way of injunction. *Rhymney Ry. Rhymney Iron Co.* 59 L. J. Q. B. 414; 25 Q. B. D. 146; *Denaby Main Colliery. Co v. M. S. & L. Ry. Co.* 55 L. J. Q. B. 181; 54 L. T. *Murray v. Glasgow and South Western Ry. Co.* 4 Ry. & Ca. Tr. Cas. 456

Action to recover overcharges.—A trader complained that a railway company had for many years charged higher rates for the carriage of his goods than for that of a neighbour's, the distance being 8 miles in the former case and in the latter 12, starting from the same point.—Held, that no action would lie to recover overcharges. *Murray v. Glasgow & S. W. Ry. Co.* 4 Ry. Ca. Tr. Cas. 456; *Crouch v. L. & N. W. Ry. Co.* 2 Car & K. 789; See *Baxendale v. L. & S. W. Ry. Co.* 35 L. J. Ex. 108; 12 Jur. 274; *Contra* :—Where one of certain persons has been paying the higher rate for sometime in ignorance of the facts, but afterwards on finding that he was subjected to this higher charge, paid it under protest; it was held that he was entitled to recover back in an action for money had and received the difference he had so paid under protest. *L. & N. W. Ry. Co. v. Exershed.* 48 L. J. Q. B. 22; 30 L. T. 336.

Action for charges—Set off of overcharges not allowed.—In an action by a railway company for charges in respect of the carriage of goods, the defendant cannot set off payments made under protest in respect of overcharges which amount to an undue preference by the railway company as against the defendant within the meaning of S. 2. *Rhymer Ry. v. Rhymer Iron Co.* 59 L. J. Q. B. 414.

It is no defence to an action brought by a railway company to recover charges for the carriage of goods that the charges sued for are unreasonable, so as to give an undue preference to other persons or to subject the defendant to undue prejudice or disadvantage within the meaning of S. 2 of the Railway and Canal Traffic Act, 1845 nor can the defendant in such an action set off or recover by counterclaim, overpayments in respect of previous charges which were unreasonable within that section *L. & Y. Ry. Co. v. Greenwood* 58 L. J. Q. B. 16; 21 Q. B. D. 215, See also *Anderson v. Mill Ry. Co.* 71 L. J. Ch. 89.

Traffic Facilities.

42. (1) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of rolling-stock.

Duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality

(2) A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(3) A railway administration having or working railways which form part of a continuous line of railway communication, or having its terminus or station within one mile of the terminus or station of another railway administration, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the other at such terminus or station, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may by means of such railways be at all times afforded to the public in that behalf.

(4) The facilities to be afforded under this section shall include the due and reasonable receiving, forwarding and delivering by every railway administration, at the request of any other railway administration, of through traffic to and from the railway of any other railway administration at through rates:

Provided as follows:—

- (a) the railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its amount and its apportionment and the route by which the traffic is proposed to be forwarded. The proposed through rate for animals or goods may be per truck or per maund;
- (b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment and route, and, if it has any objection, what the grounds of the objection are;
- (c) if at the expiration of the prescribed period no such objection has been sent by any forwarding railway administration, the rate shall come into operation at the expiration of that period;
- (d) if an objection to the rate, apportionment or route has been sent within the prescribed period, the Governor General in Council may, if he thinks fit, on the request of any of

railway administrations, refer the case to the Commissioners for their decision;

- (e) if the objection is to the granting of the rate or to the route, the Commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interests of the public; and whether, regard being had to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly or fix such other rate as may seem to the Commissioners to be just and reasonable;
- (f) if the objection is only to the apportionment of the rate, and the case has been referred to the Commissioners, the rate shall come into operation at the expiration of the prescribed period, but the decision of the Commissioners as to its apportionment shall be retrospective; in the case of any other objection the operation of the rate shall be suspended until the Commissioners make their order in the case;
- (g) the Commissioners in apportioning the through rate shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance or working of the route or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof;
- (h) the Commissioners shall not in any case compel any railway administration to accept lower mileage rates than the mileage rates which the administration may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route.
- (i) subject to the foregoing provisions of this sub-section, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly;

(j) the prescribed period mentioned in this sub-section shall be one month, or such longer period as the Governor General in Council may by general or special order prescribe.

Sub-Sections, 1, 2, & 3 are adapted from S. 2 of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. C. 31).

Sub-Section 4 with provisoes (a) to (h) are copied from S. 11 of The Regulation of Railways Act, 1873 (36 and 37 Vict. C. 48), which is again repeated (with some addition as regards the forwarding of through traffic at the request of an individual) in S. 25 of the Railway and Canal Traffic Act, 1888.

Proviso (1) is the same as S. 26 of the last named Act.

Section 2 of the Railway and Canal Traffic Act, 1854, (17 and 18 Vict. C. 31) from which Sub Sections 1, 2 and 3 of this Section (42 of Act IX of 1890) are adapted is as follows :—

“Every Railway Company, Canal Company, and Railway and Canal Company, shall according to their respective powers afford all reasonable facilities for the receiving and forwarding and delivering of Traffic (which includes passengers and their luggage, goods and animals) upon and from the several railways (which includes all public stations) and canal belonging to or worked by such Companies respectively and for the return of carriages, trucks and boats, and other vehicles, and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication or which have the terminus, station or wharf of the one near the terminus, station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals of the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage, as aforesaid and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf.”

According to its powers :—The words “According to their respective powers” in S. 2 of the Railway and Canal Traffic Act, 1854, do not refer to powers restricted by any private agreements with individuals. *Rishton Local Board v. L. & Y. Ry. Co.* 8 Ry. & Can. Tr. Cas. 74; Thus it is clear that no company would be required to carry things which it was not possible for them to carry such as articles of im-

mence weight or too large to pass under bridges &c. The powers that have to be considered are not their physical powers, but their legal powers.

Reasonable facilities—What must be proved:—“In considering what is a reasonable amount of accommodation, regard must be had to the convenience of the general traffic of the company”—Per Cresswell, J. in *Barret v. G. N. Ry. Co. and Midland Ry. Co.* 26 L. J. C. P. 83; 1 Ry. & Ca. Tr. Cas. 38; In *Newry Navigation Co. v. G. N. Ry. Co. (Ireland)* 7 Ry. & Ca. Tr. Cas. 176, Sir F. Peel said “It is not enough to show that it would be conducive to the convenience of the public that they (i.e. facilities) should be afforded. It is necessary also to show that they are facilities which can be reasonably required of the railway company after making due allowance for the degree in which the railway company have made provision for the accommodation of the goods traffic of the place taken as a whole and further, they must be such facilities as it is within the power of the railway company to grant.” In *the Queen. v. Railway Commissioners and Distington Iron Co* 22 Q. B. D. 642, *Huddleston*; B. while construing the 2nd Section of the Railway and Canal Traffic Act, 1854, said “What then is the meaning of facilities? It is clear that the word has no reference to excessive charges at all, but is used with reference to the convenience to be afforded in receiving and forwarding and delivering traffic, and so on, and the return of carriages; and that is the right view as appears from the Judgment of Brett, L. J. in *S. E. Ry. v. Railway Commissioners* 6 Q. B. D. at p. 600. When speaking of facilities he said “Their (Commissioners’) jurisdiction was further confined to this, that they could only properly deal with matters which might *facilitate or impede* the receiving, forwarding or delivering of passengers or goods upon or from *the existing railways* or stations. They had no jurisdiction to entertain or deal with matters otherwise affecting passengers and goods.

Refusal to afford reasonable facilities—Excessive charges not a denial of “reasonable facilities”:—The expression “facilities for the receiving etc; of traffic” is to be used in its natural meaning, and it has no reference at all to the charges which a Company make. The mere fact that railway companies make charges for the conveyance of passengers in excess of those which they are authorised to make, but without undue preference, is not a breach of their obligation to afford reasonable facilities—*G. W. Ry. Co. v Railway Commissioners* 7 Q. B. D. 182. The mere refusal by a railway company to receive and forward the traffic of persons in general except upon prepayment of charges in excess of the maximum authorized is not a denial of reasonable facilities nor an undue or unreasonable prejudice within the meaning of S. 2 of the Ry. & Can. Tr. Act, 1854. Again in the same case Cotton L. J. at p. 196 said “Now what I think comes within those words “afford all reasonable facilities” is the providing proper accommodation in the stations and in the carriages for the receiving and forwarding passengers and for getting them in and out of their carriages and the like. *The mere fact that charge is beyond that which Parliament has sanctioned* is not, in my opinion, a refusal to afford facilities”.

Reasonable facility-Packing:—Requirement of packing was not a refusal of reasonable facilities. *sutcliffe v. G. W. Ry. Co.* (1910) 1 K. B. 478.

Duties of railway companies as regards facilities:—One of the chief duties of every Railway Company is to provide platforms, booking offices, sidings, &c., at any station sufficient to afford to the public every reasonable convenience in relation to both passengers and goods traffic, so as to avoid dangerous or obstructive confusion, delay or other impediment to the proper reception, transmission or delivery of the ordinary traffic of that station. If the company do not reasonably perform this duty, they may be compelled by the Commissioners to perform it and to afford all reasonable facilities for such receiving, forwarding and delivering passengers and other traffic at and from any of their stations which are used by the company for such passengers or traffic.

Discretion of the company in performing their obligation not to be interfered:—The Commissioners have no power to order the company to make a new railway station or to order any particular works or otherwise to interfere with the discretion of the company as to the precise method in which they will afford such facilities and remedy that which is wrong, yet they have power to order such facilities, even if their doing so would necessitate the making by the company of some structural alterations of such station. Thus the Commissioners may order certain facilities to be given, the giving of which may involve the enlargement of existing platforms or erection of new buildings, but they have no power to order a building to be erected of a specified design or on a particular spot. *S. E. Ry. Co. v. Railway Commissioners and Corporation of Hastings* 3 Ry. & Ca. Tr. Cas. 464. 6 Q. B. D. 586; 50 L. J. Q. B. 201. If a station or any other building is too small for its purpose, the Commissioners may order an enlargement to be effected but they cannot make such an order unless the company are the owners of the land required for such enlargement; because if that land do not belong to them, they will not be able to afford the facilities that are ordered to be done by them, as they could only acquire the necessary land under an Act of Parliament. *Thomas v. N. Staffordshire Ry. Co.* 3 Ry. and Ca. Tr. Cas. 1

Traffic.—"Traffic" means passengers and their luggage, and all kinds of goods, animals and other things carried by any railway company, and also wagons or trucks suitable for running on the railway.—See also S. 3 (11) of the Indian Railways Act. S. 42 deals not only with goods traffic and the rates charged to traders but also with the traffic by the carriage of human beings. *Emp. v. Brijbasil* 18 A. L. J. 254; 42 All 327, 333; *Vishvnath v. G. I. P. Ry.* (1921) 23 Bom. L. R. 809, 813.

Local Traffic:—Local traffic means the traffic between two stations on the same railway. *Midland Railway Co. v. Manchester Sheffield & Lincolnshire Ry. Co.* 22 L. T. 601.

Undue preference:—The term “undue preference” includes an undue preference or an undue or unreasonable prejudice or disadvantage, in any respect in favour of or against any person or particular class of persons or any particular description of traffic. S. 55 of Railway and canal Traffic Act, 1888.

Incompetency of ordinary Courts to consider questions of undue or unreasonable preference under s. 42:—It is not open to the ordinary courts, in view of the provisions contained in secs. 26 to 41 of Chap. V of the Railways Act, to consider or express any opinion whatever on the question whether there has been any undue or unreasonable preference within the meaning of Sec. 42 of the Act. *Mathuradas v. secy of state* 21 Ind. Cas. 499 = 7 S. L. R. 42.

Provisions of S. 2 of Ry. & can. Tr. Act. 1854, when violated—remedy by injunction:—When any act has been done or omission made in violation or contravention of any provision of S. 2, the only remedy is by way of injunction and no action for the recovery of over-charges or damages would lie in respect of any such breach. *M. S. & L. Ry. Co. v. Denaby Main Colliery Co.* 14 Q. B. D. 209; 54 L. J. Q. B. 103; *Murray v. G. & S W. Ry. Co.* 11. Sess. Ca. 4th Ser. 205, *Cal Ry. Co. v. Cross*, 16 Sess. Ca. 4th Ser. 584, on the same principle *Cave, J.* in *L. & Y. Ry. Co. v. Greenwood* 21 Q. B. D. 251, held that it was no defence to an action brought by a railway company to recover charges for the carriage of goods that the charges sued for were unreasonable so as to give an undue preference to other persons and that the defendant could not in such an action set off, or recover by counter claim over-charges made by the company which were unreasonable within that Section. See also *Rhymney Ry. Co. v. Rhymney Iron Co.* 25 Q. B. D. 146; 59 L. J. Q. B. 414 where it was also held in an action brought against the debts, by a railway company that they were not entitled to set off or counter claim any sums representing the excess over the rates paid by the other company. In connection with this read S. 41 of Indian Railways Act which provides that no suit shall be instituted or proceeding taken for any thing done or any omission made by a railway administration in violation or contravention of any provisions of Chap. V. or order made by a Commissioner or by a High Court.

Necessary to prove public inconvenience—individual grievance not sufficient:—To justify the interference of the Court on a question of a reasonable facilities, it must be shewn that public convenience requires it and that it can reasonably be done. The court will not interfere, at the instance of an individual where there is a continuous line by which through tickets may be obtained, though by a somewhat longer route, no additional cost, or serious loss of time, being thereby incurred and no substantial inconvenience being thereby occasioned to the public. *Barret. v. G. N. Ry. Co.* 1 C. B. 423; 26 L. J. C. P. 83. The Commissioners give precedence to the convenience of the general public before everything else while making orders on a question of reasonable facilities. But they will not order any thing to be done, if it is likely to disorganise the prevailing system or method in

which it is most convenient for the company to work nor will they order anything to be done if the cost of doing it would throw a great burden or expense which it would be unreasonable to ask the company to incur. *Sussex County Council v. L. B. & South Coast Ry. Co.* 8 Ry. & Can. Traff. Cas. 17; See also *Beadell v. E. C. Ry. Co.* 1 Ry. & Can. Traff. cas. 56; 26 L. J. C. P. 250; There ought to be a substantial inconvenience to the public. *Painter v. L. B. & S. C. Ry. Co.* 1 Ry. & Can. Traff. Cas. 58; 2 C. B. 702; *Ilfracombe Public Conveyance Co. v. L. & S. W. Ry. Co.* 1 Ry. & Can. Tr. cas. 61. As to closing the doors of the station against the public or an individual and not against the company's agent. See *Palmer v. L. & S. W. Ry. Co.* 36 L. J. C. P. 289; L. R. I. C. P. 588; *Baxendale v. L. & S. W. Ry. Co.* 12 C. B. (N. S.) 758.

The commissioners in delivering the judgment of *Holyhead Local Board v. L. & N. W. Ry. Co.* 3 Ry. & Can. Tr. Cas. 37 said "The Traffic Act of 1854, does not compel a railway company to find reasonable accommodation for the public further than as it is in the interests of railway traffic that it should be found * * * a station cannot be expected to have every possible facility, and it is enough if on * * the whole * * local passenger traffic is well off in respect of station accommodation; see also *Newry Navigation Co. v. G. N. Ry. Co. of Ireland* 7 Ry. & Can. Tr. Cas. 176.

Failure to construct—no violation:—Where the works necessary for additional accommodation can not be executed except with the consent of some public authority (for example municipal authority) or some one other than the railway Company themselves, the failure to construct the same is not a violation of the provisions as to reasonable facilities within S. 2, of the Ry. & Canal Traffic Act, 1854, *Corporation of Asbroath. v. Caledonian and N. E. Ry. Co.* 10 Ry. & Can. Tr. cas. 252.

Station accommodations.

It is a good ground of complaint that there is no place of shelter provided at the junction, for passengers on the branch line waiting the arrival of trains, the public being entitled in this respect to reasonable station accommodation.

(a). **Accommodation at Stations:**—It would be a contravention of this section, if a company (having sufficient powers) keeps its station structures in such a condition as to space and arrangements, as to cause dangerous or obstructive confusion, delay or other impediment to the proper reception, transmission or delivery of traffic. *S. E. Ry. Co. v. Ry. Commrs & Hastings Corpn.* 3 Ry. & Can. Traff. Cas. 464.

(b). **Place of Shelter:**—Per Crowder J. "with respect to the want of a covered station at Caterham junction, I think that is a reasonable accommodation to which the public are entitled and that there ought to be a rule as to that" Per Creswell J. I think the absence of such accommodation subjects passengers on the Caterham line to undue prejudice and inconvenience, and it appears that there

covered stations at all the other places on the line; as to that, therefore the rule may go." *Caterham Ry. Co. v. L. B. & S. C. Ry. Co. & S. E. Ry. Co.* 26 L. J. C. P. 16; 1 C. B. (N. S.) 410; but in *S. E. Ry. Co. v. Railway Commissioners and Corporation of Hastings* 6 Q. B. D. 586; 50 L. J. Q. B. 201, it was decided that facilities which are merely for the comfort of passengers will not be ordered.

(c). **Covered foot-path between station and carriage road:**—Where a station was situate 130 yards from any carriage road, and that no protection from the weather for passengers passing between the station and the carriage road was afforded, it was held that it did not afford sufficient accommodation to the public. *Junes v. L. B. & S. C. & S. W. Ry. Cos.* 2 Ry. & Ca. Tr. Cas. 155.

(d). **Covered footpath between two stations:**—Two railways ran trains to A, and each had a station there; the stations were less than a mile apart, and were connected by a line belonging to one of such companies, but no passengers were conveyed on the line between the stations:—Held that the two companies must afford all due and reasonable facilities for forwarding passenger traffic and the same would be complied with, if the two companies make a good covered footpath between the two stations and provide the necessary portorage to accommodate persons with luggage desiring to pass from the one to the other, and establish through booking. *Sussex County Council v. L. B. & S. C. Ry.* 8 Ry. & Can. Traff. Cas. 17; *Maidstone Corporation v. S. E. Ry. Co.* 7 Ry. & Can. Traff. Cas. 59; *Junes v. L. B. & S. C. Ry. &c.* 2 Ry. & Can. Traff. Cas. 155.

(e). **Two stations-connection with ports-facilities for merchandise traffic at passenger station:**—A Railway Company had a passenger station at N. close to the port of N. but all goods and cattle had to be taken nearly a mile between their goods station and the port for shipment—Held that the company by not connecting their passenger station with the port had not contravened the provisions of S. 2 of Ry. & Can Tr. Act, 1854 in not affording reasonable facilities for goods and cattle traffic. *Newry Navigation Co. v. G. N. Ry.* 7 Ry. & Can. Traff. Cas. 176; Where as a necessary incident of opening a line for passenger traffic, the structural alterations involved would be so large as to be beyond the jurisdiction of the commissioners to order, an order for facilities for passenger traffic will not be made. *Glamorganshire County Council v. G. W. Ry. Co.* 8 Ry. & Can Traff. Cas. 196.

(f). **Structural alterations to station-new station:**—The railway commissioners have jurisdiction to hear & determine a complaint against a railway company of not, according to its powers, affording all reasonable facilities for receiving, forwarding & delivering passengers & other traffic at & from any of its stations which are used by the company for such passengers or other traffic; and although the Commissioners have no jurisdiction to order the company to make a new railway station, or to order any particular works, or otherwise to interfere

with the discretion of the company in the mode of performing its obligation to afford such facilities according to its powers for the receiving &c. of the traffic, yet they have power to make an order to increase the accommodation for the delivery of tickets at a railway station and also to order such facilities, even if their doing so would necessitate the making by the company of some structural alterations of such station. *S. E. Ry. Co. v. Railway Commissioners* 50 L. J. Q. B. 201; 6 Q. B. D. 586.

(g) **Order to rebuild and to reopen closed station:**—The railway commissioners have no jurisdiction to order a railway company to rebuild and reopen for passenger traffic a station which the company has closed and pulled down, the reasonable facilities for traffic which a company is required to afford, having no application to stations that are not in use. *Darlaston Local Board v. L. & N. W. Ry. Co.* (1894) L. J. Q. B. 826 (*Winsford Local Board v. Cheshire Lines Committee* 24 Q. B. D. 456 overruled)

(h). **Water-closets at station:**—The mere fact that railway companies make a charge to their passengers for the use of water closets at their stations is not, in the absence of undue preference, a breach of their obligations under S. 2 to afford all reasonable facilities &c. *West Ham. Corporation v. G. E. Ry. Co.* 64 L. J. Q. B. 340; (*G. W. Ry. v. Railway Commissioners, & Brown*. In re. 7 Q. B. D. 182, followed.)

(i). **Cloak room, a reasonable facility:**—A cloak room is a reasonable facility within S. 2 of the Railway and Canal Traffic Act, 1854 *Singer and Co. v. S. W. Ry. Co.* (1894) 1 Q. B. 833; 63 L. J. Q. B. 411.

(j). **Refreshment accommodation-Covering over platforms &c:**—Orders as to Refreshment accommodation and the covering over of platforms, carriage yard and bridge were not "facilities" within the statute. Per Lord Selbourne *S. E. Ry. v. Railway Commissioners & Corp of Hastings* 6 Q. B. D. 586, 50 L. J. Q. B. 201.

(k). **Booking office-Waiting room-a facility:**—Orders as to booking office, waiting room and cattle accommodation were such facilities. *S. E. Ry. v. Railway Commissioners* (Supra)

(l). **Platforms:**—Platforms of sufficient length is a reasonable facility, *S. E. Ry. v. Railway Commissioners* (Ibid).

Comfort and Convenience of passengers:—Facilities, which merely concern the comfort and convenience of passengers, cannot be ordered. *S. E. Ry. Co. v. Ry. Commrs & Hastings Corpn.* 6 Q. B. D. 586.

Reasonable facilities include proper accommodation in the stations and in the carriages, and for receiving and forwarding passengers, and for getting them in, and out of the carriages and the like Per Cotton L. J. in. *G. W. Ry. Co. v. Railway Commrs. & Brown* 7 Q. B. D. 182, 194.

Train accommodation.

(1). **Additional trains** :—The railway Commissioners will order additional trains to be run if a strong case of its being reasonable to do so is made out—*Innes v. L. B. & S. C. Ry. & L. & S. W. Ry. Co.* 2 Ry. & Can. Tr. Cas. 155; See also *Catterham Ry. Co. v. L. B. & S. C. Ry. Co.* 26 L. J. C. P. 161.

(2). **Through trains** :—Through booking is a facility which may be granted if it is reasonable in the interests of the public to do so. In such a case it is not necessary that, the service should be continuous by the same trains or by a connector between trains. *Innes v. L. B. & S. C. Ry. & anr.* (ib); *Sussex county council v. L. B. & S. C. Ry. & anr.* 8 Ry. & Can. Traff. Cas. 17; *Didcot & c. Ry. Co. v. L. & S. W. Ry. Co.* 10 Ry. & Can. Traff. Cas. 15. Thus one railway company received goods for carriage from one place on their line to another place on the line of another company. Between such places there was through communication by means of a continuous line of railway. The forwarding company refused to book the goods to their destination but only booked to a place to the end of their railway, from where they were further booked to their destination on another railway. Held:—That the forwarding company must allow through booking from a station on their line to a station on another line, and that through booking was a facility, which railway companies may reasonably be required to afford. *Uckfield Local Board v. L. B. & S. E. Ry. Cos.* 2 Ry. & Can. Traff. Cas. 214. But a Company which has not got running powers cannot be compelled to run trains to an exchange station in order to take up through traffic. *London & India Docks Co. v. G. E. & Mid Ry. Co.* 20 T. L. R. 371 C. A.

(3). **Number and time of trains—stoppages** :—To induce the Court to interfere on a complaint by the proprietors of a branch line, that a sufficient number of trains of the main line does not stop at the junction or stop at convenient times, it must be distinctly shewn that sufficient accommodation is not afforded to meet the fair requirements of the public. *Catterham Ry. In re* 26 L. J. C. P. 161.

(4). **Closing of the line** :—Unless a railway company is required by its Act to keep open its line and stations, it is entitled to close any part of its line or any of its stations whenever it desires to do so—Per Lord Esher M. R. in *Darlaston Local Board v. L. & N. W. Ry.* 63 L. J. Q. B. 826; 2 Q. B. 694.

(5). **Line only used for mineral and goods traffic**.—Where an application to the Commissioners, seeks to compel a railway Company to give facilities for a particular class of traffic on a branch line, which is part of a larger railway system and on any part of that larger system, that particular class of traffic is carried, it is not an answer going to jurisdiction for the railway company to say that they have never carried that particular class of traffic on that branch line. *Glamorganshire County Council v. G. W. Ry.* 8 Ry. & Can. Traff. Cas. 196.

(6). **Fans** :—It is not obligatory for the Ry. Co. to provide fans or jattis in all its carriages. *B. B. & C. I. Ry. Co v Harrison* (1921) Lahore. H. Ct. 19-1-21.

Siding accommodation.

With reference to siding accommodation the Railways (Private sidings) Act, 1904 (4 Edw. 7 C. cl. 19) S. 2 may with advantage be referred to here.

S. 2. The reasonable facilities which every Railway Company is required to afford under S. 2 of the Railway and Canal Traffic Act, 1854, as amended or explained by any other Act, shall include reasonable facilities for the junction of private sidings or private branch railways with any railway belonging to or worked by any such Company, and reasonable facilities for receiving, forwarding and delivering traffic upon and from those sidings or private branch railways.

Continuance of an existing siding is a facility:—Where a siding connection is in existence the continuance of such a connection may be a reasonable facility within the meaning of S. 2 of the Railway and Canal Traffic Act, 1854. *Beeston Brewery Co. v. Mid Ry. Co.* 5 Ry. & Can. Traff. cas 53; *Portway v. Colne Valley Halstead Ry. Co.* 7 Ry. & Can. Traff. Cas. 102.

Making a new siding—not a facility:—Commissioner Miller held that the making of a siding was not a reasonable facility, *Beeston Brewery Co. v. Mid Ry. Co.* (16); *Girardot v. Mid Ry. Co.* 5 Ry. & Can. Traff. Cas. 60; See also *Lancashire Brick and Terracotta Co. Ltd. v. L. & V. Ry. Co.* (1902) 1 K. B. 381 & 651.

Private Siding:—Where the company has agreed to construct a private siding the Court will grant specific performance of such an agreement. *Green v. Cheshire Ry. Co.* L. R. 13 Eq. 44.

Approaches do not include sheds:—Under an agreement by a Company to make and maintain a siding communicating with its railway, together with all necessary approaches thereto, it was held that the company was not bound to provide sheds or any conveniences other than approaches. *Lyllo v. G. N Ry. Co.* 4 W. R. 441.

Make and Maintain and Uphold:—An undertaking by a railway company to "make and maintain and uphold in full efficiency" a siding does not oblige the company to provide servants, but only applies to the structures of the siding. *Kennedy v. Glasgow & S. W. Ry. Co.* (1905) 8 F. (Ct. of Sess.) 13.

Where a siding and a communication were made for plaintiff by a company without formal agreement and used by the plaintiff for 2½ years and the company then stopped the communication on the parties failing to come to terms. It was held that the plaintiff had acquired a right to the communication by the acquiescence of the company, and the company was ordered to restore communication. *Leird v. Birkenhead Ry. Co.* (1895) John 500. As to what circumstances will justify a Co. in terminating a siding agreement. See *Richards v. G. W. Ry. Co.* (1900), 11 Ry. & Can. Tr. Cas. 133

Construction of Junction to connect siding:—In the Dublin's case noted below the Railway Commissioners, in their judgment remarked that "This

an application for an order directing the respondents to connect a siding of the applicants with their Liffey branch line, and to receive and deliver traffic at the Junction. The siding has been constructed with reference to the provisions of the Railway Clauses Act, 1845, which enacts that any one who has land adjoining a railway, or with the consent of the owner of such land, may lay down a siding upon it, and require such siding to be made by the railway company to communicate with their railway, except as to places where such communication would cause inconvenience or danger to their traffic. The respondents deny the right of the applicants to a Junction under the Railway Clauses Act 1845, and the applicants have taken no steps under that Act to enforce their claim. They have preferred to proceed under the Traffic Act, 1854, and they contend that what they ask to have done is a reasonable facility within the meaning of that Act. They intimated, however, in the course of the hearing that they did not at present seek an order to work traffic; and it is clear that as such an order could only be issued upon a well-sounded ground of *complaint in respect of past working*, there is as yet no case for one, and that a siding must be joined to the railway, or a communication of some sort opened before the question can arise whether proper working facilities are afforded at the siding junction * * * The applicants have now laid out a private siding adjoining the railway, but the company refuse to have a junction with it and the question is whether a junction is, in the circumstances, one of those reasonable facilities for traffic, which the Traffic Act, 1854, makes it the duty of railway companies to afford. The applicants assert that they have by the Railway Clauses Act, 1845, a right to a Junction, and assuming the statutory obligation and proof of the failure to comply with it, that alone might be sufficient for a mandamus to issue against the company in default * * * at any rate something more than the mere fact that such a right exists would in a complaint under the Traffic Act, where reasonableness is so material an element, be required to establish it, and if, for example, it would not be practicable to work a Junction if made, the making of it could hardly be enjoined upon a company as a reasonable facility for traffic * * * A siding Junction as proposed by the applicants would be unuseable for at least half the traffic which it has in view, and of course the sanction of the Board of Trade would be required before it could be used at all; and although the applicants only ask at present for an order directing the company to construct a Junction, the propriety of granting an order even so limited depends upon the effect such a Junction; when it comes to a question of using it, may be expected to have upon traffic. If it would have no effect at all, because it would not satisfy the conditions upon which the Board of Trade give their sanction to a Junction being used, or it would be an advantage to particular traffic, but an advantage that would be out-weighed by its interference with the course of traffic, in general, it would not be right to make the order. The test to be applied is the facility to traffic. If a Junction could not be reasonably worked when constructed, a railway company could not be enjoined to construct it as a reasonable facility. *Dublin Whisky Distillery Co. v. Midland G. W. of Ireland Ry.* 4 Ry. & Can. Traff. Cas. 32; See also *Hammons v. G. W. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 181,

Resumption of facilities:—The Railway Commissioners have no power to order a railway company to build a new station or to rebuild one that has been pulled down or to adapt a goods station for passenger traffic or to double a single line of railway, in order to afford reasonable facilities for the purpose of receiving and forwarding and delivering of any passenger traffic on any part of a railway upon which the traffic has been discontinued. *Darlaston Local Board v. L. & N. W. Ry. Co.* 2 Q. B. 694; 8 Ry. & Can. traff. Cas. 216; *Glamorganshire County Council v. G. W. Ry. Co.* 8 Ry. & Can. Traff. Cas. 196; 64 L. J. Q. B. 138. (See contra—*Winsford Local Board v. Cheshire Lines Committee*, 7 Ry. & Can Traff. Cas. 80; 24 Q. B. D. 456; *S. E. Ry. Co. v. Ry. Com. of Hastings* 6 Q. B. D. 586) *R. v. York & North Midland Ry. Co.* 1 E. & B. 178 and 858; and *R. v. G. W. Ry. Co.* 62 L. J. Q. B. 572.

Unauthorized rates and fares.

The mere fact that a railway company charged beyond the maximum sums authorised for the conveyance of passengers and goods, but without any undue preference, did not amount to a breach of their obligation to afford all reasonable facilities according to their powers; but if the over-charges are of such a nature that they have no statutory authority to make and which have the effect of preventing and which are made with the intention of preventing and do in fact prevent the use of particular trains and station or the traffic to those stations, the Commissioners have jurisdiction to entertain a complaint in respect of them as being a refusal of facilities. *G. W. Ry. Co. v. The Ry. Commissioners & Brown* 7 Q. B. D. 182; (*Dislington Iron Co. v. L. & N. W. Ry. Co. & other* 6 Ry. & Can. Traff. Cas. 108 overruled); *Young v. Gwendraeth Valleys Ry. Co.* 4 Ry. & Can. Traff. Cas. 247. In the latter case Bramwell L. J. said that the words "Every Railway x x x shall afford all due and reasonable facilities for the receiving &c." in S. 2 of the Railway and Canal Traffic Act had no reference to the prices a railway company may charge for conveyance.

Delivery of traffic &c.

Receiving and delivering of traffic at Sidings—supply of waggons—Reasonable facilities:—For this See Sec. 2 of the Railways (Private Sidings) Act 1904 (4 Edw. C. 7. c. 19) (Supra).

When such services are performed they cannot be the subject of a special charge unless the work done are more than are ordinarily incidental to the performance of such services, *Watkinson v. Wrexham &c. Ry. Co.* (No 1) 3 Ry. and Ca. Tr. Cas. 5; *Portway v. Colne Valley Ry. Co.* 10 Ry. & Ca. Tr. Cas. 211; *Vicars, Sons & Maxim. Ltd. v. Mid. Ry. Co.* 11 Ry. & Ca. Tr. Cas. 254; Thus the railway company have no power to make a charge for services at the junction of their line with the sidings. In *Pidcock's case*, Sir F. Peel said "The rate (i. e. conveyance rate) is for conveyance by merchandise train, and this will include an

work which is incidental to such conveyance and for the performance of which it is reasonable to use the train engine, as for example, when at a Junction with the main line of either a station siding or a private siding the train has to pick up or throw off trucks, the work of hauling or shunting the trucks over the points at the Junction and over so much of the siding as the keeping of the main line clear of obstruction may require. But conveyance other than this off the main line does not seem to come within Sec. 2." *M. S. & L. Ry. Co. v. Pidcock* (No. 2) 10 Ry. & Ca. Tr. Cas. 150.

In *Watkinson v. Wrexham &c. Ry. Co.* (No. 2) 3 Ry. Ca. Trs. Cas. 164 as regards supplying of sufficient waggons by the company it was held that the obligation on the A. Company to provide waggons sufficient for the working of B railway was imposed by the Special Act and that any one interested in procuring that accommodation had a good ground of complaint against that company if they refused to provide the same. See also *Tharsis Sulphur Co's case* 3 Ry. & Ca. Tr. Cas. 455.

Under Sec. 2 of the Railway and Canal Traffic Act, 1845, the reasonable facilities which a railway company are bound to give include (1) the provision of sufficient locomotive power where delay or unreasonable detention of trucks is caused by want of sufficient locomotive power, (2) prompt return of trader's empty waggons to their sidings, and (3) regular and prompt removal of loaded waggons which may be ready and waiting for despatch from such traders' sidings. *Watkinson v. Wrexham &c. Ry. Co.* (No. 3) 3 Ry. & Ca. Tr. Cas. 446.

Right of trader to provide trucks:—A Railway Company is under no obligation to convey on its railway trucks belonging to a trader at all times and in all circumstances, but if a railway company fails to provide sufficient trucks for the conveyance of the merchandise of a particular trader, the trader may provide his own trucks, and in that case motive power for the haulage of the trader's trucks is a reasonable facility for the forwarding and delivering of traffic which the railway company must provide under S. 2 of the Railway and Canal Traffic Act, 1844.

By the Schedule to the G. W. Ry. Co. Order Confirmation Act, 1891, S. 2, it is provided that in certain cases where "*the Company do not provide trucks*" in which merchandise is carried on the railway, the rate authorized for conveyance shall be reduced in the manner therein provided:—Held, that this enactment does not apply to a case where, although the company is ready and willing to provide trucks, the trader prefers to and does, use his own trucks, but only to a case where the trader uses his own trucks in order to supplement a deficiency in supply of trucks by the company. *Spillers & Bakers Ltd. v. G. W. Ry. Co.* 1 K. B. (1910) 778.

Company not bound to provide Booking offices for traffic at places off their railway line:—In *Dublin & Meath Ry. Co. v. Midland, Gr. Western of Ireland Ry. Co.* 3 Ry. and Can. Tr. Cas. 379. The Commissioners in delivering the Judgment said:—"It is, no doubt, to the benefit of places that are situated

some miles from a railway station that there should be persons to collect and deliver goods regularly as carriers. *B & C* are six or seven miles from *A* and the complaint under this head is that the *Midland* do not do, as the *Great Northern* have a booking office at those places, and arrange for the prompt and punctual transport of goods by road to and from their nearest railway station. We, however, do not think that a railway company is responsible for making carrying arrangements by road in addition to its proper business of carrying by railway."

The duty to afford facilities is restricted to the railway, and there is no obligation, therefore, on a company to provide booking offices &c. at places situated off the railway or to arrange for the carriage by road of goods between such places and stations on the railway. *L. & N. W. Ry. Co. v. S. E. Ry. Co.* (1911) 1 K. B. 534;

Delivery according to instructions:—A railway company is bound to follow the instructions of the consignor and have no right against the will of the consignees to insist upon carting goods to their destination; but where special instruction is given to a company as to delivery, the same should be followed even in preference to a previous general direction given to them by the consignee; however, if consignee is the owner of the goods his special instructions as to delivery will over-ride special instructions of the consignor. *Parkinson v. G. W. Ry. Co.* L. R. 6 C. P. 554; *John Wallis & Sons v. G. N. Ry. Co. of Ireland* 12 Ry. & Ca. Tr. Cas. 38; In *Menzies v. Caledonian Ry. Co.* 5 Ry. & Ca. Tr. Cas. 306 Sir F. Peel said that "A railway company cannot force a person against his will to employ them to cart by road in addition to the service of conveyance by railway, and that a consignee has the right, if he pleases, to receive his goods at the station, and to relieve the carrier from any further duty of carriage in that case. It does not seem to be disputed that if the consignee sends a special order referring to a particular consignment, directing that it should be delivered at the station instead of at his own house, the railway company would in that case be bound to deliver the consignment to the person producing the order. But in this case the order is of a general kind, to deliver all consignments present or to come for the person who sends the order * * * I do not myself see any distinction in principle between a special order referring to a particular consignment and a general order referring to all kinds of consignments. * * * There is a conflict of view between the decisions that were given under the Traffic Act by the Court of Common Pleas in this country and those given by the Court of Session in Scotland. In this country in the case of *Baxendale v. G. W. Ry. Co.* (28 L. J. C. P. 81), and in the case of *Garton v. G. W. Ry. Co.* (28 L. J. C. P. 306), and more particularly in *Parkinson v. G. W. Ry. Co.* (L. R. 6 C. P. 544), the Court of Common Pleas held that a railway company were bound by a general order of that kind. On the other hand, in *Wannan v. Scottish Central Ry. Co.* (2 Sess. Ca. [3rd. Ser.] 1373), and again in *Pidford v. The Caledonian Ry. Co.* (4 Sess. Ca. [3rd. Ser.] 755), the Court of Session held that the railway company were not bound by any such general order,

work which is incidental to such conveyance and for the performance of which it is reasonable to use the train engine, as for example, when at a Junction with the main line of either a station siding or a private siding the train has to pick up or throw off trucks, the work of hauling or shunting the trucks over the points at the Junction and over so much of the siding as the keeping of the main line clear of obstruction may require. But conveyance other than this off the main line does not seem to come within Sec. 2." *M. S. & L. Ry. Co. v. Pidcock* (No. 2) 10 Ry. & Ca. Tr. Cas. 150.

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and * * * that * * * the railway company had the option to take no notice of the order and to deliver the goods according to the address that they had received."

In another case a consignment note with goods, was handed to the servants of the defendant railway company, containing, in addition to the names and addresses of the consignees, the words "To the care of F. & Co." The defendant company refused to act upon the instructions in the consignment note and delivered the goods to the consignees by their own agents or carriers. The Commissioners held (1) that the words "To the care of F. & Co." imported that the goods were to be delivered to F. & Co. or their agents for delivery to the consignees; (2) that as between the defendant company and F. & Co. the latter were the consignors and that they accepted the goods for conveyance under the terms and conditions mentioned in the consignment note, and therefore they should have delivered the same to F. & Co. or their agents. *Fishbourne & Co. v. Midland Gr. Western of Ireland Ry. Co.* 2 Ry. & Ca. Tr. Cas. 224; See also *Ford, v. L. & S. W. Ry. Co.* 7 Ry. & Ca. Tr. Cas. 111; and *John Wallis & Sons. v. G. N. Ry. Co. of Ireland* 12 Ry. & Ca. Tr. Cas. 38.

In *Thomas v. N. Staff. Ry. Co.* 3 Ry. & Ca. Tr. Cas. 1, the defendant railway company delivered minerals at T. station (which was adapted for passenger and mineral traffic only) but refused to deliver there damageable traffic consigned to the applicant, and delivered the same at L. (which was a general goods station and was adapted for the reception of damageable goods) about a mile and a half distant from T. The accommodation at T. was not sufficient to receive all the T. goods traffic and they had no power to enlarge it except by buying land from private persons at a high price, their parliamentary powers having expired, it was held that the applicant was not entitled to have such goods delivered at that station. If there had been accommodation sufficient to receive all kinds of traffic, the company would have been ordered to deliver such goods to the applicant at T. station.

Notice of arrival of goods will be sent when practicable.—Subject to the provisions of Sec. 58 of the Indian Railways Act, 1890 (IX of 1890), notice of arrival will be sent when practicable, but the railway administration will accept no responsibility for non-receipt thereof.—See rule 5 of the Rules for the Warehousing and Retention of Goods, under S. 47 (1) f.

When wharfage charge may be levied.—A wharfage charge may be levied in respect of all goods not removed from Railway premises before closing time of the day following that on which they are made available for delivery.—See rule 3 of the Rules for the Warehousing and Retention of Goods under S. 47 (1) f.

Undue preference or Advantage.

Preference.—The provisions of S. 42 (2) as to preference apply only to traffic facilities i. e. to rolling stock and passengers, animals and goods and not to persons coming to see friends off. *E. I. Railway v. Moti Sagar.* 46 P. R. (1911) 126.

Preference—meaning of:—Preference is a well-known term used to denote preferential rates or conditions of transit granted to special individuals or particular classes of traders *Emp. v. Brijbasi Lal* (1920) 42 All 327.

Meaning of the word "undue preference":—The term "*undue preference*" includes an undue preference, or an undue or unreasonable prejudice or disadvantage, in any respect, in favour of or against any person or particular class of persons or any particular description of traffic—See Sec. 55 of the Railway and Canal Traffic Act, 1888 (51 & 52 Vic. c. 25) What is an undue preference is a question of fact. *Pickering v. L. & N. W. Ry. Co.* 2 Q. B. 229, 8 Ry. & Ca. Tr. Cas. 83.

Power of Railway to reserve accommodation for particular class of passengers:—Secs. 42 & 43 have no application to the case of the reservation of a particular passenger carriage for the use of any particular class of the travelling public. Such reservation does not amount to "*preference*" forbidden by these sections. *Brijbasi Lal v. Emp.* (1920) 15 A. L. J. 254=42 all 327.

Jurisdiction of ordinary courts in dealing with matters relating to preference:—The preference forbidden by Ss. 42 & 43 of the Rys. Act refers to goods traffic and rates charged upon traders and does not apply to passengers and, in as much as a special tribunal is appointed for the decision of questions thereunder, the ordinary civil and criminal tribunals have no jurisdiction to deal with questions of preference. *Brijbasi Lal v. Emp.* 2 U. P. L. R. (A.) 65; 18 A. L. J. 254; 21 Cr. L. J. 294; 42 All 327 (1920) 55 Ind. Cas. 342.

Meaning of the Word "Traffic":—The word "*traffic*" includes not only passengers and their luggage, and goods, animals, and other things conveyed by any railway company, or railway and canal company, but also carriages, waggons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company—S. 1 of the Railway and Ca. Tr. Act, 1854. The word does not include a person going to the railway station to see a friend off. *E. I. Railway Co. v. Moti Sagar* 46 P. R. (1911) 126; 12 Lawyer 781; 6 P. W. R. 251. *Vishwanath v. G. I. P. Ry.* (1921) 23 Bom. L. R. 809=62 Ind. Cas. 1004. See also s. 3 (11) of this Act.

Traffic in Sec. 42 (2) is not restricted to conveyance of animals & goods and the fixing of charges therefor. *Komaran & Govindasami* (1922) 42 Mad. L. J. 21; It is lawful for a railway company to reserve a compartment by its train for the use of Europeans and Anglo Indians only. *Komaran & Anr.* (Supra).

Convenience of general public should be considered:—Questions whether preference is undue are determined by the Railway Commissioner. In dealing with such questions they will give greater weight to considerations affecting the interests and welfare of the public than to any other. They can favour the interests of the public without laying railway company or forcing unremunerative traffic upon

might be unreasonable to carry goods of a certain description to a certain station for one trader and to refuse to carry similar goods to that station for another trader in the same town, it might be quite reasonable to carry such goods to that station for the corporation of the town while refusing to do so for any private trader; for such an exception in favour of the corporation might be for the benefit of the inhabitants of the town at large, while the giving of the same facilities to all might disorganise the traffic of the company. *Lees v. L. & Y. Ry. Co.* 1 Ry. & Ca. Tr. Cas. 352. (Disney on the Law of Carriage by Railway 2nd Ed. p. 224).

Refusing to unload trucks:—In *Copper v. L. & S. W. Ry. Co.* (4 C. B. (N. S.) 738) The Railway Company unloaded some trucks and placed them near those of the plaintiff and Pickford & Co, but afterwards refused to do so for the plaintiff. Upon a rule being obtained, it was held that the railway company were not bound to unload carriers' trucks, but intimated that if they unloaded some they should unload all and further held that they could be compelled to treat all equally by unloading none or all.

Undue preference by company in favour of themselves or their agents:—A railway have no right to prefer themselves or their agents to the public and to carriers other than themselves (Macnamara on Law of Carriers by Railway p. 450). In *Goddard v. L. & S. W. Ry. Co.* 1 Ry. & Ca. Tr. Cas. 308 the complaint was that the defendant company showed partiality to themselves as carting agents to the prejudice of the complainant. In *Baxendale v. Bristol and Exeter Ry. Co.* 1 Ry. & Ca. Tr. Cas. 229 the complaint was that the defendant allowed their agents to receive goods without a forwarding note being signed by the consignors. In *Ford v. L. & S. W. Ry. Co.* 7 Ry. & Ca. Tr. Cas. 111, parcels addressed "Per A & Co." who were carriers, were accepted for conveyance to a place beyond the terminus of the defendant company's railway. The company disregarded the words "Per A & Co." and delivered the parcels to B & Co. (who were company's agents and also carriers on their own account) who delivered the same to the consignee. This was held to be an undue preference of B & Co. In *Garton v. B. & E. Ry. Co.* 1 Ry. & Ca. Tr. Cas. 218, the complaint was that the company received the goods from one carrier upto 8 P. M., while they refused to receive the goods from the general public after 5-30 P. M., to go by the same train. Held it was an undue preference. On the same principle see also *Palmer v. L. & S. W. Ry. Co.* 8 Ry. & Ca. Tr. Cas. 53.

For cases of undue preference of one trader over another see *Macfarlane v. North British Ry. Co.* (No. 2) 4 Ry. & Ca. Tr. Cas. 269.

Company cannot charge for services not performed:—A railway company cannot charge for services which are not required to be performed by them. *Garton v. G. W. Ry. Co.* 28 L. J. C. P. 158; *Garton v. Bristol & Exeter Ry. Co.* 30 L. J. Q. B. 273; they cannot include in a charge for carrying, a charge for collection and delivery, whether the customer requires the services to be performed for him or not. *Baxendale v. G. W. Ry. Co.* (Reading case) 28 L. J. C. P. 81.

Consignor to select route—If not selected by him company may select—

Per Sir F. Peel:—"Where a railway company has two or more lines or channels of communication in its own hands, it may conduct the traffic which is left to its own direction, by which one of them it prefers, and so long as it leaves traders also free to select the route they think most convenient, and subjects them to no undue disadvantage or unequal terms in carrying their traffic by the route they direct, as compared with the route which itself, so to speak, favours, it does nothing which the Traffic Act prohibits". *Londonderry Port &c. v. G. N. Ry. Co. & others*, 5 Ry. and Ca. Tr. Cas. 282 at p. 284.

If a Company has the management and control of two competing routes, it ought to afford equal facilities to the public by both routes. (*Ibid*).

Sub-clause 3—shall afford all due and reasonable facilities for receiving and forwarding traffic &c.—This provision corresponds with the 3rd paragraph of S. 2 of "The Railway and Canal Traffic Act, 1854 (17 and 18 Vic. C. 31)" which runs as follows:—

"Every railway Company * * * * having or working railways * * * which form part of a continuous line of railway * * * communication, or which have the terminus, station, * * of the one near (i. e. by the interpretation clause of the Act, within one mile, except in London) the terminus, station, * * of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or * * by the other, without any unreasonable delay, and without any preference or advantage, or prejudice or disadvantage, and so that no obstruction may be offered to the public desirous of using such railways * * as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways, (which include stations) * * of the several companies, be at all times afforded to the public in that behalf,"

Continuous line of railway communication:—Until works necessary for the exchange of traffic at the junction of connecting lines are completed and sanctioned by the Board of Trade, the route is not a continuous line of railway communication within the meaning of S. 2 of the Railway and Canal Traffic Act, 1854. *Hammans Foster & other v. G. W. Ry. Co. & others* 4 Ry. and Ca. Tr. Cas. 181; (*Macnamara on Carriers* p. 377).

S. 25 of the Railway and Canal Traffic Act, 1888:—(51 & 52 Vict. C. 25), from which clauses A to H of sub-section 4 of S. 42 of the present Act are taken, is as follows:—

S. 25 "Subject as hereinafter mentioned, the said facilities to be so afforded are hereby declared to and shall include the due reasonable receiving, forwarding and delivering by every railway company and canal company and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal or of any other such company at through rates, tolls or fares (in this Act referred to as through rates) and also the due and reasonable receiving

ing, forwarding and delivering by every railway company and canal company and railway and canal company, at the request of any person interested in through traffic, of such traffic at through rates: Provided that no application shall be made to the Commissioners by such person until he has made a complaint to the Board of Trade under the provisions of this Act as to complaints to the Board of Trade of unreasonable charges, and the Board of Trade have heard the complaint in the manner herein provided:

“Provided as follows:—

- (1) The company or person requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding company, stating both its amount and the route by which the traffic is proposed to be forwarded, and when a company gives such notice it shall also state the apportionment of through rate. The proposed through rate may be per truck or per ton :
- (2) Each forwarding company shall, within ten days, or such longer period as the Commissioners may from time to time by general order prescribe, after the receipt of such notice, by written notice inform the company or persons requiring the traffic to be forwarded whether they agree to the rate and route; and if they object to either, the grounds of the objection :
- (3) If at the expiration of the prescribed period no such objection has been sent by any forwarding company, the rate shall come into operation at such expiration :
- (4) If an objection to the rate or route has been sent within the prescribed period, the matter shall be referred to the Commissioners for their decision :
- (5) If an objection be made to the granting of the rate or to the route, the Commissioners shall consider whether the granting of a rate is a due and reasonable facility in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly; or fix such other rate as may seem to the Commissioners just and reasonable :
- (6) Where upon the application of a person requiring traffic to be forwarded, a through rate is agreed to by the forwarding companies, or is made by order of the commissioners, the apportionment of such through rate, if not agreed upon between the forwarding companies, shall be determined by the commissioners :
- (7) If the objection be only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period, but the decision of the commissioners, as to its apportionment, shall be retrospective; in any other case the operation of the rate shall be suspended until the decision is given :
- (8) The commissioners, in apportioning the through rate, shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route,

or any part of the route as well as any special charges which any company may have been entitled to make in respect thereof:

- (g) It shall not be lawful for the Commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route.

Where a railway company or canal company use, maintain, or work, or are party to an arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such steam vessels, and to the traffic carried thereby.

When any company, upon written notice being given as aforesaid refuses or neglects without reason to agree to the proposed through rates, or to the route, or to the apportionment, the Commissioners, if an order is made by them upon an application for through rates, may order the respondent company or companies to pay such costs to the applicants as they think fit.

Clause (f) of sub-Section 4 is taken from S. 26 of the last named Traffic Act of 1888 which enacts that:—

S. 26. "Subject to the provisions in the last preceding section contained, the Commissioners shall have full power to decide that any proposed through rate is just and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly."

Pooling Agreement:—With the object of avoiding competition an agreement known as a "Pooling Agreement" is frequently made between companies which are the owners of the competitive lines. By such an agreement, the company's partners thereto, agree that the gross revenue arising from the competitive traffic shall be divided between them in agreed proportions. Such an agreement is not illegal; but a pooling agreement with regard to the revenue to be divided from traffic on a railway not yet in existence nor authorized to be made is invalid.

Meaning of the word "route":—"Route" means a route from the station on the sending line where the traffic arises to the station on the forwarding line where such traffic is delivered See S. 11 (5) of the Regulation of Railways Act, 1873.

(1) **The route should be a reasonable one:**—Thus where a railway company having two alternative routes for through traffic, one 8 miles longer than the other, proposed for the purpose of a through rate, to carry the traffic by the longer route, with the object of making their mileage rate more, and the mileage rate of the forwarding company less. Held, that such longer route was not a reasonable route within the meaning of Sec. 11 (5) of the Regulation of Railways Act, 1873. *East & West Junction Ry. Co. v. G. W. Ry. Co.*, 1 Ry. & Ca. Tr. Ca. 331.

(2) A route is not unreasonable because it is proposed to hand over to the receiving company traffic at a point only a few miles distant from its destination

although such company could receive it at a point further distant from its destination. (*Caledonian Ry. Co. v. North British Ry. Co.* (No. 4) 3 Ry. & Ca. Tr. Ca. 403) *Macnamara on carriers* p. 400.

(3) Any one of the public intending to send traffic over the railways of two or more railway companies forming together a continuous route, may, under S. 2 of the Railway & Canal Traffic Act, 1854, require the companies to combine to carry his traffic at a single booking and for a single payment as an accommodation reasonable to be granted to him *Didcot, Newbury & Southampton Ry. v. G. W. Ry. & L. & S. W. Ry.* 9 Ry. & Ca. Tr. Cas 210.

Reasonable route—Mode of working:—In *Severn & Wye & Ry. Co. v. G. W. Ry. Co.* 5 Ry. & Ca. Tr. Cas. 170, the Commissioners held that a route in order to be considered a reasonable one within the meaning of Sec. 11 of the Regulation of Railways Act, 1873, it should be capable of maintaining a competition with quicker or cheaper routes, and efficient enough to be likely to be preferred for some portion of the traffic. Commissioner Miller said:—"Prima facie, I think it is in the interest of the public that there should be at least two routes open between any two given places, provided that those routes are practically independent of one another, fairly alternative, and reasonably calculated to keep one another in check. Mere paper competition would not be for the public interest....."

"The route should be such as we might fairly expect, other things being equal, a substantial portion of the traffic to go by." If there are grounds for the Court allowing something claimed as a proper facility for using railways, an objection grounded on its inconvenient consequences to railway companies by reason of arrangements made by themselves will not suffice for not allowing it. *Didcot Newbury & Southampton Ry. v. G. W. Ry. and L. & S. W. Ry.* (supra).

Railway Company to direct route—not a contravention of the Act:—It is not a contravention of the Traffic Act and Rules for a railway company, in a tenancy agreement made between it and certain traders, to impose and enforce a condition entitling the railway company to direct by which one of two competitive routes in connection with its railway, through traffic consigned to trade (rates being the same) shall be carried. *London & N. W. Ry. Co. v. S. E. Railway Co.* (1911) 1 K. B. 534.

Through booking not a matter of right—Through booking necessarily involves an order for a through rate:—An order by the railway Commissioners for through booking is not a matter of right. Through booking is a facility within the meaning of S. 2 of the Railway and Canal Traffic Act, 1854, and S. 25 of the Railway and Canal Traffic Act, 1888, and upon an application for an order for through booking the Commissioners must have regard to the considerations mentioned in those sections. Per Lord Esher, M.R., and Riggby, L.J.:—"An order of the railway Commissioners for through booking necessarily involves an order for a through rate, although the through rate is only the sum of the local rates of the

several lines over which the traffic passes. *Didcot, Newbury and Southampton Ry. v. G. W. Ry. & L. & S. W. Ry.* (supra).

Through rates—public and other interests to be considered in competitive routes:—A through rate will not be granted unless it is proved that it is necessary for the public interest. *Belfast Central Ry. Co. v. G. N. Ry. Co. of Ireland* (No. 3) 4 Ry. & Ca. Tr. Cas. 159; but where a good *prima facie* case of public interest exists on general considerations, it is not necessary to bring evidence to prove a special case as well. *Central Wales &c. Ry. Co. v. G. W. Ry. & others* 4 Ry. & Ca. Tr. Cas. 110; the railway Commissioners, however, will consider not only the public interest, but also the right of a railway company to a long run in respect of traffic originating on its own system. *Plymouth, Devonport, &c. Ry. Co. v. G. W. and L. & S. W. Ry. Cos.* 10 Ry. & Ca. Tr. Cas. 68; See also *Didcot, Newbury &c. Ry. Co. v. L. & S. W. Ry. Co.* (No. 2) 10 Ry. & Ca. Tr. Cas. 9.

Customer's right to apply for through rate:—In England a customer can apply to the Board of Trade for a through rate under S. 25 of "The Railway and Canal Traffic Act, 1888", if he so desires, but in India, from the wording of S. 42 of Act IX of 1890, it appears that he has no such right.

Intermediate administrations as well as those at the extreme ends of proposed through rate, can apply:—Administrations whose lines are situated at the extreme ends of the proposed through rate are not the only administrations entitled to request a through rate and rate under Sec. 42 (4) of the present Act, but administrations whose railways occupy an intermediate position may also do so. *Central Wales & Carmarthen Junction Ry. Co. v. G. W. Ry. Co.* 10 Q. B. D. 231; 2 Ry. & Ca. Tr. Cas. 191.

Through Communication for passengers:—Two railway companies ran trains to A, and each had a station there. The stations were one mile apart, but were connected by a line of railway, which line, however, was used for goods traffic only. Upon a complaint that no passengers were conveyed on the railway between the two stations, the Commissioners made an order enjoining both the companies to afford facilities for a continuous communication for passengers as well as for goods by means of their continuous lines. *Uckfield Local Board v. L. B. & S. E. Ry. Cos.* 2 Ry. & Ca. Tr. Cas. 214; *James & others v. Taff Vale & G. W. Ry. Co.* 3 Ry. & Ca. Tr. Cas. 540; *Victoria Colliery Co. v. Mid & Neath & Brecon Ry. Cos.* 3 Ry. & Ca. Tr. Cas. 37. *Maidstone Town Council v. S. E. Ry. Co. & L. C. & D. Ry. Co.* 7 Ry. & Ca. Tr. Cas. 99. *Sussex County Council v. L. B. & S. C. and L. & S. W. Ry Cos.* 8 Ry. and Ca. Tr. Cas. 17.

Disputes between Companies inter se no answer to public:—It is no answer to the public, desirous of using railways as a continuous line, that disputes exist between the railway companies *inter se*. *Hammans Foster & others v. G. W. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 181. *Dublin W. & W. Ry. Co. v. Mid. Gt. W. Ry. Co. of Ir. Co.* & anr. 8 Ry. & Ca. Tr. Cas. 39; In *Met. Dist. Ry. Co. v. Met. Ry. Co.*

5 Ry. & Ca. Tr. Cas. 126. Mr. Commissioner Miller said :—" It is a jurisdiction given in order to prevent railway companies, by agreement or want of agreement amongst themselves, from imposing difficulties in the way of traffic being carried from point to point, and under any circumstances where you find a continuous line of railway belonging to two or more companies, and any of the companies interested in the route has given the proper statutory notices so as to bring the case within the terms of Sec. 11 of the Act of 1873, and a difference has arisen between the companies as to whether the proposed rates should come into operation or not, it appears to me that the Jurisdiction of this tribunal to hear and determine that question at once arises, and cannot be ousted in any way by any equities that may exist between the different companies themselves."

Reasonable facilities—Through rate:—Where there is an agreed through rate for through traffic over the lines of two railway companies and an agreed apportionment between the two companies which has not been cancelled, the Ry. and Canal Commissioners have no jurisdiction to make a fresh apportionment of that agreed rate or one of the same amount at the instance of one of the railway companies; the duty and power of apportionment being incidental only to the fixing of reasonable facilities for the conveyance of through traffic from one point to another. *Manchester ship canal Co. v. L. & N. W. Ry. Co.* C. A. (1911) 1 K. B. 657.

Apportionment of through rates:—The mode of apportioning through rates between railway companies generally is to divide by the mileage after deducting the terminal charges. As a general rule, however, it is reasonable that where a Company has a very short distance, it should have more in proportion than the Company which has a long distance. *Severn & Wye, &c. Ry. Co. v. G. W. Ry. Co.* 5 Ry. & Ca. Tr. Cas. 156 at p. 167; *Tal-Y-llyn. Ry. Co. v. Cambrian Rys. Co.* 5 Ry. & Ca. Tr. Cas. 122; *Manchester ship Canal Co. v. Mid Ry. Co.* 10 Ry. & Ca. Tr. Cas. 34.

Carrying on trades by Railway Co.:—It is ultra vires of a railway Company to work coal mines or to deal in coal for purposes of profit. *A. G. v. G. N. Ry. Co.* 8 W. R. 556.

43. (1) Whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area lower rates for the same or similar animals or goods, or lower rates for the same or similar services, than it charges to other traders or classes of traders; or to the traders in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration.

Undue preference
in case of unequal
rates for like traffic
or services.

(2) In deciding whether a lower charge does or does not amount to an undue preference, the Commissioners may, so far as

they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge is necessary for the purpose of securing, in the interests of the public, the traffic in respect of which it is made.

This section is adapted from S. 27 of "The Railway and Canal Traffic Act, 1888" (51 & 52 Vic. C. 25) which enacts that—

"(1). Whenever it is shown that any railway company charge one trader or class of traders, or the traders in any district, lower tolls, rates, or charges for the same or similar merchandise, lower tolls, rates or charges for the same or similar services, than they charge to other traders, or classes of traders, or to the traders in another district, or make any difference in treatment in respect of any such trader or traders, the burden of proving that such lower charge or difference in treatment does not amount to an undue preference shall lie on the railway company. (2). In deciding whether a lower charge or difference in treatment does or does not amount to an undue preference, the court having jurisdiction in the matter, or the commissioners, as the case may be, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge or difference in treatment is necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made, and whether the inequality cannot be removed without unduly reducing the rates charged to the complainant provided that no railway company shall make, nor shall the court, or the commissioners, sanction any difference in the tolls, rates, or charges made for, or any difference in the treatment of home and foreign merchandise, in respect of the same or similar services. (3). The court or the commissioners shall have power to direct that no higher charge shall be made to any person for services in respect of merchandise carried over a less distance than is made to any other person for similar services in respect of the like description and quantity of merchandise carried over a greater distance on the same line of railway."

Scope of the Section:—Where a company charge one person more than another for goods of the same description carried between the same points under the same circumstances, the person who is charged the higher sum may recover by action from the company the excess which he is charged over the charge made to the other. *Denaby Main Colliery Co. v. M. S. & L. Ry. Co.* 11 App. Cas. 97. The meaning of the provision in S 27 of The Railway & Canal Traffic Act, 1888 (Cf. present section) as to the retention of lower rates in the public interest was first raised in *Liverpool Corn Traders' Association v. L. & N. W. Ry. Co.* (1891) 60 L. J. Q. B. 76; 7 Ry. & Ca. Tra. Cas 125 which decided that the effect of the section is not to limit the Court in dealing with questions of alleged undue preference to the consideration whether or not the lower charge is necessary in the interests of the public. See also *Liverpool Corn Traders' Association v. G. W. Ry. Co.* 8 Ry. Ca. Tr. Cas. 114. The same point again arose in *Pickering Phipps v. L. & N.*

Ry. Co. (1892) 8 Ry. & Ca. Tr. Cas. 83 wherein Lord Herschell, sitting in the Court of Appeal said: "When it (i.e. sec. 27 (2) of the Act of 1888) speaks of the difference in treatment necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made, I cannot suppose that the legislature, by using that language, had in view that the motive of the railway company or that the necessity which was to be yielded to by the railway company, was to be the public good. Of course a railway company endeavours to secure the traffic for its own advantage. That is the motive which operates upon the Railway Company. Naturally enough, they want to secure all the traffic they can in order to do the best trade they can; but I think that the legislature has here pointed out that in considering a question of this sort you are not only to consider the legitimate desire of the railway company to secure traffic, but that you are to consider whether it is in the interests of the public that they should secure that traffic rather than abandon it or not attempt to secure it. Of course, many cases might be put where, although the object of the railway company is to secure the traffic for their own purposes upon their own line, yet, nevertheless, the very fact that they seek, by the charges they make to secure it operates in the interests of the public. One class of case unquestionably intended to be covered by the section is that in which traffic from a distance of a character which competes with the traffic nearer the market is charged low rates, because unless such low rates were charged, it would not come into the market at all. It is certain, unless some such principle as that were adopted, a large town would necessarily have its food supplies greatly raised in price. So that, although the object of the company is simply to get the traffic the public have an interest in their getting the traffic and allowing the carriage at a rate which will render that traffic possible, and so bring the goods at a cheaper rate, and one which makes it possible for those at a greater distance from the market to compete with those situated nearer to it. That is one class of case, no doubt intended to be dealt with." See also *Holwell Iron Co's case* (Infra).

Undue Preference:—The expression "Undue preference" is not defined in the Indian Act, but according to English Law, it includes an undue preference, or an undue or unreasonable prejudice or disadvantage, in any respect, in favour of or against any person or particular class of persons or any particular description of traffic. (*Railway & Canal Traffic Act, 1888, S. 55*). Reservation of a particular passenger carriage for the use of any particular class of the travelling public does not amount to preference forbidden by this section. *Brijbasi Lal v. Emp.* 42 All 327.

Trader:—Includes any person sending, receiving, or desiring to send merchandise by railway. (*The Railway and Canal Traffic Act, 1888, S. 55*).

Merchandise:—The term "Merchandise" include goods, cattle, live stock, and animals of all descriptions, (*Ibid*).

Burden of proof:—According to Sec. 102 of the Indian Evidence Act, 1872, the burden of proof lies on that person who would fail if no evidence at all were given on either side, but according to this Act, the burden lies on the Company to

prove that the lower charge referred to in the section does not amount to an undue preference, whenever it is shown by the complainant that a railway administration charges one trader or class of traders in any local area lower rates for the same or similar animals or goods than it charges to other traders or other traders for similar services in another "local area."

Similar services:—Include charges for services rendered by the company such as terminal charges or warehouse rent &c.

When preferences are prohibited:—Sec. 2 of the "Railway and Canal Traffic Act, 1854, does not prohibit all preferences but only those preferences which are undue or unreasonable. *Pickering Phipps v. L. & N. W. Ry. Co.* (Supra); Therefore a charge made by a railway against A, for services rendered by that company to him, must not be greater than the charge made by the same company against B for rendering him services of the like nature. *L. & N. W. Ry. v. Evershed* 48 L. J. Q. B. 22; 39 L. T. 306.

Undue preference—Question of fact:—What amounts to an undue preference is not a question of law, but one of fact. (Ibid); See also *Dipluys. C. State Co. v. Festiniog Ry. Co.* 2 Ry. & Ca. Tr. Cas. 73 at p. 81.

Not every preference undue:—The Traffic Act, 1854, s. 2 (from which sub-sections 1, 2 & 3 of S. 42 of Act IX of 1890 have been adapted) implies that there may be a preference which is due. It does not make every inequality of charge an undue preference, and, if the circumstances so differ that the difference of charges is in exact conformity with the difference of circumstances, there is no preference at all. Whether the preference or, prejudice is undue or unreasonable is a question of fact. *Pickering Phipps v. L. & N. W. Ry. Co.*, 8 Ry., etc., Traff. Cas. 83 at p. 95.

In ascertaining whether a preference is undue or unreasonable, it is not alone the interests of the complainant which are to be considered; a fair regard must also be had for the interests of the Company, and the permission given by the Traffic Act 1888, to the Commissioners to take into consideration the interests of the public, is not intended to preclude or in any way affect the Company's right to a fair and reasonable consideration of its interests. *Abram Coal Co. v. G. C. Ry. Co.*, 12 Ry. & C. & Traff. Cas. 426 at p. 441 (C. A.)

Principles to be taken into consideration in deciding what amounts to undue preference:—In determining whether mileage rates charged by a railway company to one trader on a lower scale than to another do or do not amount to an undue preference, the court may take into consideration the fact that one of the traders has access to a competing line of railway. *Foreman v. G. E. Ry. Co.* 2 Ry. & Ca. Tr. Cas. 202; *Thompson v. L. & N. W. Ry. Co.* 2 Ry. & Ca. Tr. Cas. 115; *Budd v. L. & N. W. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 393; *Pickering Phipps v. L. & N. W. Ry. Co.* (Supra); *Charrington & Co. v. Mid. Ry. Co.* 11 Ry. & Ca. Tr. Cas. 222; also whether the lower charge or difference in treatment is necessary for the

purpose of securing in the interests of the public, *Liverpool Corn Traders' Association v. G. W. Ry. Co.* 8 Ry. & Ca. Tr. Cas. 114; *Spiller & Bakers Ltd. v. Taff. Va. Ry. Co.* 12 Ry. & Ca. Tr. Cos. 70; or to their convenience, *Less v. L. & Y. Ry. Co.* 1 Ry. & Ca. Tr. Cas. 352; the traffic in respect of which it is made; whether articles sufficiently alike as to be substantially and commercially of the same description though of different qualities are carried at different rates. *Nitshell, &c. Ry. Co. v. G. W. Ry. Co.* 2 Ry. & Ca. Tr. Cas. 39; *Lancashire Patent Fuel Co. Ltd. v. L. & N. Ry. and other Ry. Cos.* 12 Ry. & Ca. Tr. Cas. 77; whether more accommodation is given to one trader in preference to another, such as delivering similar merchandise to one trader at his private siding while refusing to do the same to another trader. *Beeston Brewery Co. v. Mid. Ry. Co.* (No. 1) 5 Ry. & Ca. Tr. Cas. 53; *Girard & Co. v. Mid. Ry. Co.* 5 Ry. & Ca. Tr. Cas. 60; *Cowan v. N. B. Ry. Co.* (No. 2) 11 Ry. & Ca. Tr. Cas. 96; whether it is to the convenience of or advantage to the company *Ransome v. Eastern Counties Ry. Co.* (No. 1) 1 Ry. & Ca. Tr. Cas. 6; *Oxlade v. N. E. Ry. Co.* (No. 1) 1 Ry. & Ca. Tr. Cas. 72; *Garton v. Bristol & Exeter Ry. Co.* 28 L. J. C. P. 306; *Nicholson v. G. W. Ry. Co.* 28 L. J. C. P. 89; 1 Ry. & Ca. Tr. Cas. 121; *Daddy v. Mid. Ry. Co.* 10 Ry. & Ca. Tr. Cas. 303; *Hickleton & Co. Ltd. v. Hull &c. Ry. Co.* 12 Ry. & Ca. Tr. Cas. 63. Thus there is no limit to the things which the Court may have to consider in deciding such a question although any one of them by itself may be of the smallest weight. *Fairweather & Co. and others v. Corporation of York* 11 Ry. & Ca. Tr. Cas. 201.

Instances of Undue preference:—Carrying coals from a colliery along a railway at a lower rate of charges than coals from other coal pits situate in the same locality, in consequence of a threat from the owner of the colliery to construct another railway, by which the traffic would have been diverted, if the railway company had not consented to carry at such lower rate, is an undue preference by the railway company. *Harris v. Cockermouth &c. Ry.* 3 C. B. (N. S.) 693; 1 Ry. & Ca. Tr. Cas. 97.

(2). A Northern Railway Company, from a desire to introduce the northern coke into Staffordshire, made special agreements with certain merchants for the carriage of coal and coke at a lower rate than their ordinary charge; there being nothing to show that the pecuniary interests of the company were affected.—Held that the lowering of the rate for this traffic was giving it an undue preference. *Wes v. L. & N. W. Ry. Co.* 39 L. J. C. P. 282; *Ransome v. Eastern Counties Ry.* 26 L. J. C. P. 91; 1 Ry. & Ca. Tr. Cas. 63; but it would not be so if the said trader had consented to send large quantities of traffic over the line at regular intervals. *Nicholson v. G. W. Ry. Co.* 1 Ry. & Ca. Tr. Cas. 121.

(3). A preference given by a railway company to a customer who engaged to employ other lines of the Company for traffic distinct from and unconnected with that in respect of which such preference was given, is an undue preference. *Bazen- dale v. G. W. Ry. Co.* 1 Ry. & Ca. Tr. 191; 28 L. J. C. P. 69; so also an agree-

ment by the trader to send his goods by the defendant railway, and not by any other railway company *Garton v. B. & E. Ry. Co.* 1 Ry. & Ca. Tr. Cas. 218.

In respect of goods, &c.

Lower rate-no undue preference-Interest of the company should be considered:—A railway company is justified in carrying goods for one person at a less rate than that at which the company carries the same description of goods for another, if there are circumstances which render the cost to the company of carrying for the former less than the cost of carrying for the latter. *Oxlade v. N. E. Ry.* 26 L. J. C. P. 129; 3 Jur. (N. S.) 637; 1 Ry. & Ca. Tr. Cas. 72; *Rhymney Iron Co. v. Rhymney Ry. Co.* 6 Ry. & Ca. Tr. Cas. 60 (in this case a reduced rate for iron ore was allowed but was refused for coal traffic).

The 17 & 18 Vict. C. 31, S. 2. is not contravened by a railway company carrying at a lower rate, in consideration of a guarantee of large quantities and full train loads at regular periods, provided the real object of the company is to obtain thereby a greater remunerative profit by the diminished cost of carriage, although the effect may be to exclude from the lower rate those persons who cannot give such a guarantee. *Nicholson v. G. W. Ry. Co.* 28 L. J. C. P. 89; 2 L. T. 234.

(2). In dealing with the first branch of the section of the statute which prohibits railway companies from giving any undue or unreasonable prejudice or advantage to or in favour of any particular person, or any particular description of traffic, or subjecting any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage, the fair interests of the company are to be taken into account. *Ransome v. Eastern Counties Ry.* 26 L. J. C. P. 91; 1 Ry. & Ca. Tr. Cas. 63; See also *Harris v. Cockermouth & C. Ry.* (*supra*).

A rebate of 15 p. c. and other allowances to customers who guaranteed to send goods to London by the S. E. Co's steamers and railway amounting to 850 tons per month was held not unreasonable *Greenop v. S. E. Ry. Co.* 2 Ry. & Ca. Tr. Cas. 319; *Holland v. Festiniog Ry. Co.* 12 Ry. & Ca. Tr. Cas. 278. To justify the larger trader having a lower rate it must appear that there is a saving to the railway company in the carriage of his traffic, something more than a mere quantitative difference to the company more or less equivalent to the advantage they give to him. *Dalry v. Mid Ry. Co. and others* (*supra*). Granting a season ticket at reduced rates to traders who guarantee to send annually a particular amount of traffic over their line is not an undue preference *Inverness Chamber of Commerce v. Highland Ry. Co.* 11 Ry. & Ca. Tr. Cas. 218.

Inequalities in rates between home and foreign merchandise:—On an application against a railway company alleging undue preference in charging lower rates for foreign than for home merchandise; Held, that the effect of proviso 2 of Sec. 27 of the Railway and Canal Traffic Act, 1888, is *not to prohibit all inequalities in rates as between home and foreign merchandise*, but that if the railway com-

pany have proved facts, which would justify the admitted differences, had the goods in both cases been home goods, the company are not debarred from relying on those facts as an answer, merely because the goods which receive the benefit of the difference are of foreign origin. *Mansion House Association v. L. & S. W. Ry.* 64 L. J. Q. B. 529; 9 Ry. & Ca. Tr. Cas. 20.

Special agreements for carriage when good:—It is competent to a railway company to enter into special agreements, whereby advantages may be secured to individuals in the carriage of goods upon the railway where it is made clearly to appear that in entering into such agreements the company has only the interests of the proprietors and the legitimate increase of profits of the railway in view, and the consideration given to the company in return for the advantages afforded by them is adequate, and the company is willing to afford the same facilities to all others upon the same terms. *Nicholson v. G. W. Ry.* 4 C. B. (N. S.) 366; 1 Ry. & Ca. Tr. Cas. 121; but there is a doubt whether equal treatment is extended to all traders by simply offering to them the same agreements. *Rhymney Iron Co. v. Rhymney Ry. Co.* 6 Ry. & Ca. Tr. Cas. 60 at p. 64.

Equal treatment:—"Equal treatment does not consist in all being offered a similar agreement, for if the agreement is not for the public interests, or goes beyond the fair regard which a company may pay to its own interests, it leaves untouched the right of all under the traffic Act to be put upon equal terms." *Diphwys Co. v. Festiniog Ry. Co.* 2 Ry. & Ca. Tr. Cas. 73 at p. 79.

Difference in treatment-special agreement:—A "difference in treatment" within the meaning of subs. 1 of S. 27 of the Railway and Canal Traffic Act, 1888; between rival traders by a railway company may be justified and explained by an agreement bona fide entered into by the railway company and a trader, under which land is taken and agreements are made for what is to be done on and with reference to the land so taken.

An agreement of purchase made in good faith between a railway company and a trader, whereby the latter, receives payment partly in cash and partly in services to be rendered by the railway company on land the subject matter of agreement at rates lower than those charged to other traders, is not bad in law as against public policy. Per Fletcher Moulton L. J.:—agreements for the acquisition of land are not rendered invalid by containing, as part of the consideration from the railway company, stipulations as to easements and services over the land so acquired. *Hotwell Iron Co. Ltd. v. Midland Ry. Co.* (1910) 1 K. B. 496. (Decision of the Railway Canal Commissioners (1909) 1 K. B. 486 affirmed).

Undue preference in treatment:—A difference in treatment means something resulting in difference of advantage given to a favoured trader in matters other than charge, e. g. a difference of facilities in that one trader is provided with a better service than another. *Lebers v. Mid. Ry. Co.*, 13 Ry. & Can. Traff. Cas. 301 (C. A.) See *Timm v. N. E. Ry. Co. etc.* 11 Ry. and Can. Traff. Cas. 214.

Grouping rates when and when not undue preference—Reasonable distances:—The words "passing only over the same portion of the line of railway under the same circumstances" appearing in S. 90 of the Railway Clauses Act, 1845, apply only to goods passing between the same points of departure and arrival and passing over no other part of the line.

Thus where a defendant company carried coals from a group of collieries situate at different points on a coal-field extending over 20 miles along their line and charged all of them with one uniform rate (group rate) in respect of such carriage and the complainants, the owners of the colliery lying 10 or 15 miles nearer to the point of arrival than some of the other colliers brought an action of over charges, it was held that the grouping subjected the complainants to an undue and unreasonable prejudice and that the company had not infringed S. 90. *Denaby &c. Co. v. M. S. & Ry. Co.* 3 Ry. & Ca. Tr. Cas. 426; but where they have districts for through rates extending over long distances, they are not bound to vary rate in respect of slight differences of distance. *Lloyd v. Northampton & Banbury Ry. Co.* 3 Ry. & Ca. Tr. Cas. 259. Certain works belonging to the applicants were situated at a point on the line of the Furness Railway Company, at a distance of 18 miles from the Junction of the line of that company with the line of the London and North Western Railway Company, and other works of the district were situated 38 miles from that Junction. Iron-ore and coke were obtained from the same sources in all these works, which also made the same description of pig-iron, and sent it to the same markets. The railway companies, as a means of fixing the rates, grouped all these works together and charged them a uniform rate of carriage, except that the applicants were charged at a rate of 6 d. per ton less for coke than the other works. Held, that so far as the rate for coke was concerned the railway company had made sufficient allowance for the difference in distance between the works; but as regards the iron-ore rates, the places grouped together were at such distances apart as to create an undue preference. In this case Wills, J. said: "If the rates can be defended on the ground that they do not create an undue preference without grouping, this section (S. 29 of the Ry. & Can. Tr. Act, 1888) would be inoperative, and therefore, wherever there is a grouping which is on grounds of general convenience to be defended, a more liberal allowance must be made to the companies in dealing with rates than would be permitted to them except for grouping." *North Landsdale Iron and Steel Co. v. Furness Ry. Co.* 7 Ry. & Ca. Tr. Cas. 146; See also *Davis v. Taff. Vale Ry. Co.* (1895) 64 L. J. Q. B. 488; *Milmon &c. Iron Co. Ltd. v. Furness & other Ry. Cos.* 12 Ry. & Ca. Tr. Cas. 1; *Abram Coal Co. v. G. C. Ry. Co.* 12 Ry. & Ca. Tr. Cas. 135.

Preference of one town over another:—A preference of one town over another may be justified by the exigencies of traffic, *Hosier's case* 17 Sess. Ca. (2nd Ser.) 302; *The Caterham Ry. Co's case* 26 L. J. C. P. 161 and *Jone's case* 3 C. B. (N. S. 718); as to how far the court will interfere to prevent such preferences, see *Baxendale v. G. W. Ry.* 28 L. J. C. P. 81.

Upon a complaint that the defendant did not give Newry the benefit of the geographical position of the town with regard to Belfast and several towns lying west and north west of Newry, and that they gave a preference to the said towns to forward goods to and from Belfast at lower rates than they did for Newry, although Newry was much *nearer* than Belfast:—Held, that the rates did not sufficiently take into account the difference of distance in favour of Newry, and amounted to an undue preference of Belfast over Newry. *Newry v. G. N. Ry.* 7 Ry. & Ca. Tr. Cas. 174; see also *Carrickfergus &c. Comrs. v. Belfast & N. C. Ry. Co.* 10 Ry. & Ca. Tr. Cas. 74; no place should without very good reason be deprived of the advantages given to it by its geographical position. *Timm v. N. E. Ry. Co.* 11 Ry. & Ca. Tr. Cas. 214; It has been held that the Railway Commissioners have jurisdiction to inquire into a complaint of undue preference being shewn by railway companies to one place over another. *Corporation of Dover v. S. E. Ry. Co. and L. C. & D. Ry. Co.* 1 Ry. & Ca. Tr. Cas. 349.

Rebates:—Rebates, if allowed, must be equal. *Bell v. L. & N. W. Ry. Co.* 2 Ry. & Ca. Tr. Cas. 185. Thus where the company charged the public for the carriage of goods at a rate specified, and for such charge performed the duties of the loading &c. of the goods, but by a general arrangement with carriers, the latter performed those duties, and were allowed by the company a deduction of 10 £ per cent from the charges made to the public; the company having in consequence of a disagreement refused to make this deduction to a carrier willing to perform, and in fact performing, all the duties performed by the other carriers:—Held, that they were not justified in their refusal. *Parker v. G. W. Ry. Co.* 13 L. J. C. P. 105; see also *Phipps v. L. & N. W. Ry. Co. and others* 8 Ry. & Ca. Tr. Cas. 83; and *L. & N. W. Ry. Co. v. Evershed* 48 L. J. Q. B. 22 (S. 90 of the Railway Clauses Act, 1845 requires equality of tolls for similar services rendered by Railway companies to all persons; and S. 2 of the Railway and Canal Traffic Act, 1854, forbids the giving of any undue or unreasonable preference or advantage to any particular person or company. A charge made by a railway against A, for services rendered by that company to him must not, therefore be greater than the charge made by the same company against B, for rendering him services of the like nature.)

(b). **Facilities for storing.**—A railway company, having land adjoining one of their stations, let the whole of it to P, a coal merchant, for the purpose of storing coal brought by their line; P, did not require or actually use the whole of the land for this purpose. W, another coal merchant, applied to the company to provide him on similar terms with land for storing coal, or to let to him the part of the land not actually used by P. The Company refused to do so. On an action by W, it was held that the company had no right to grant greater facilities to P than to W and that they ought to be restrained from doing so. *West v. L. & N. W. Ry. Co.* 39 L. J. C. P. 282.

In *Dalry. v. Mid Ry. Co. & others* 10 Ry. & Ca. Tr. Cas. at p. 312 Sir F. Peel said "This was *prima facie* an undue prejudice to a merchant who sent a smaller

quantity because an inequality of charge, founded merely upon one dealer doing a larger business with a railway company than another, is not allowable under the Traffic Acts. To justify the larger trader having a lower rate it must appear that there is a saving to the railway company in the carriage of his traffic or something more than a mere quantitative difference to the Company more or less equivalent to the advantage they give him.

Reduction of rates in proportion to distance:—A Company may charge for its services in proportion to their necessary cost. *Ransome, v. Eastern Counties Ry. Co.* (No. 1) 1 C. B. (N. S.) 447; for instance, it can carry a greater distance at a less cost, it may charge a proportionately less rate. *Strick v. Swansea Canal Co.* 16 C. B. (N. S.) 245; A reduction of rates in proportion to distance is justified if the principle on which the scale is graduated is a fair consideration of the cost to the company of carrying goods for the different distances. *Foreman, v. G. E. Ry. Co.* 2 Ry. & Ca. Tr. Cas. 202; the charging of a lower rate to the manufacturers within the six miles radius for the carriage of their goods a longer distance than the plaintiff's company was an undue and unreasonable preference and advantage granted to them by the defendants.

Elements of reasonableness of increase:—The reasonableness of an increase of charges is to be determined by a consideration of the circumstances existing at the time when it is made, the charge before and after the increase with reference to the services rendered, and to be rendered of the expenses of performance of the services and of every other fact with relation thereto. *North Stafford Shire Coal Owner's Association, v. North Stafford Shire Ry. Co.*, (1908) 1 K. B. 771; 30 Ry. & Can. Traff. Cas. 78, at p. 107.

Bulky goods—Goods sent with notice of minimum rate:—A railway company, who carried certain bulky commodities at a certain rate per ton, gave notice to the defendant that they would only carry such commodities on certain terms, that is, at a certain minimum rate per truck (capable of carrying 3 tons), whether filled or not, the rate per ton being far less than the ordinary rate. The defendant, although objecting to these terms, yet without any departure by the company therefrom, continued to send such commodities, sometimes in quantities of less than three tons, and claimed to be charged at the minimum rate per ton for the quantities actually carried:—Held, that he was not entitled to claim to be so charged, and was bound to pay at the rate charged per truck, and that there was nothing unreasonable therein. *G. W. Ry. v. Toorner* 11 W. R. 464. *Budd v. L. & N. W. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 393; see also *Broughton & Plas Power Coal Co. v. G. W. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 191.

Charge of Warehousing:—The charge for warehousing must not be included in a railway rate, and that they ought to permit all an equal period of warehousing. Sir F. Peel, said "this expense of warehousing seems * * to be an expense incurred by the railway company, not as carriers but as warehouse-men, and I do not think that ware-house expenditure is a proper ingredient in a railway rate.

If the railway company choose to allow free warehousing for 28 days, and they think the applicant have made a freer or longer use of that indulgence than they expected, they have the remedy in their own hands. They can, if they please, provided they treat all persons alike, curtail the time which they allow for free warehousing, and when that time is exceeded, make a charge for the over-time." *Greenwood v. L. & Y. Ry. Co.* 6 Ry. & Ca. Tr. Cas. 39 at p. 44.

Scope of the term "public":—The public referred to in the section is the public of the locality or district affected. *Liverpool Corn Traders' Association v. G. W. Ry. Co.* 8 Ry. & Ca. Tr. Cas. 114.

In respect of persons.

(A) Reasonableness of Fares—Inequality of charge:—To constitute an undue or unreasonable preference, by reason of an inequality of charge, it must be an inequality in the charge for travelling over the same line, or the same portion of the line.

The court refused to grant an injunction on the complaint of a company having a branch on a trunk line, to restrain the parent company from charging higher rates for the conveyance of passengers to the complainants' terminus than they charged for the conveyance of passengers to the terminus of another branch line (in which they themselves were interested) extending over the same number of miles. *Caterham Ry. In Re.* 26 L. J. C. P. 161; 1 C. B. (N. S.) 410.

(B) Granting of exclusive privileges—Undue preference:—(1) A railway company made arrangements, at one of their stations, with A, the proprietor of an omnibus running between the station and K, to provide omnibus accommodation for all passengers by any of their trains to and from K, and allowed A, the exclusive privilege of driving his vehicle into the station-yard for the purpose of taking up and setting down passengers at the door of the booking office:—Held, that in the absence of special circumstances shewing it to be reasonable, the granting of such exclusive privilege to one proprietor, and refusing to grant the like facilities to another, who also brought passengers from K, as well as from other places beyond, was a breach of the prohibition against the granting of undue and unreasonable preferences. *Marriott and L. & S. W. Ry. Co. In Re.* 26 L. J. C. P. 154; 3 Jur (N. S.) 493.

(2) **No undue preference when no inconvenience to the public:**—A railway company made arrangements with a cab proprietor whereby the company gave him the exclusive right to have his cabs standing at their station and plying there. Another cab proprietor, who had been refused leave for his cabs to stand and ply at the station, applied for an injunction, but the injunction was refused on the ground, that no inconvenience to the public was caused, was made out. *Bradell v. Eastern Counties Ry.* 2 C. B. (N. S.) 509; 26 L. J. C. P. 250; see also *Painter v. L. B. & S. C. Ry.* 2 C. B. (N. S.) 702, where also the court refused to grant an in-

junction, although it was sworn by the complainant, and by several other fly-proprietors who were likewise excluded from plying, that occasional delay and inconvenience resulted to the public from the course pursued.

Possession of railway in times of public emergency-traffic facilities—The order in council (of 4th August 1914 M. E. L. p. 368) is no answer to an application relating to traffic facilities for undue preference to other traders, since although possession has been taken by, and control over the railway is vested in, Secretary of State, the actual control over the working of the railroad is left with the company and so far as the exercise of that control is subservient to the paramount right which is vested in the Secretary of State, and the burden is on the railway company to show that it is not within their power to give the facilities asked for. *Denaby and Cadeby Main Cellieries, Limited v. Great Central Railway* (1915) 48 L. J. K. B. 2201.

Jurisdiction of ordinary courts in dealing with matters relating to preference—The preference forbidden by Ss. 42 & 43 of the Rys. Act refers to goods traffic and rates charged upon traders and does not apply to passengers and, in as much as a special tribunal is appointed for the decision of questions thereunder, the ordinary civil and criminal tribunals have no jurisdiction to deal with questions of preference. *Brijbasi Lal v. Emp.* 2 U. P. L. R. (A.) 65; 18 A. L. J. 254; 21 Cr. L. J. 294; 42 All 327 (1920) 55 Ind. Cas. 342.

44. Where a railway administration is a party to an agreement for procuring the traffic of the railway to be carried on any inland water by any ferry, ship, boat or raft which does not belong to or is not hired or worked by the railway administration, the provisions of the two last foregoing sections applicable to a railway shall extend to the ferry, ship, boat or raft in so far as it is used for the purposes of the traffic of the railway.

Provision for facilities and equal treatment where ships or boats are used which are not part of a railway

This section is adapted from S. 25 (last clause but one) of "The Railway and Canal Traffic Act, 1888" (51 & 52 Vict. C. 25), with this see also S. 28 of the same Act. The portion of the said Sec. 25 from which the present section is adapted is as hereunder.

"Where a railway company or canal company use, maintain, or work, or are party to an arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such steam vessels, and to the traffic carried thereby."

For the whole of the said section see sec. 42 at p. 99 & 100.

For power of railway companies to establish and work ferries—See Sec. 51 (a & b).

Definitions:—For definition of "Ferry" see sec. 3 (2); for "Inland water" see sec. 3. (3) and for "Traffic" see sec. 3 (11) and s. 42 p. 85.

Who can apply for through rates:—In *Severn & Wye & Severn Bridge Ry. Co. v. G. W. Ry. Co.* 5 Ry. & Ca. Tr. Cas. 156, the commissioners in their judgment said:—

"The length of line belonging to the applicants which is used by traffic passing over the bridge is 4 miles 31 chains; and it is argued for the G. W. Company that it is not the intention of the Act of 1873 that a route which, as compared with the route in actual use, makes material changes as between the companies having the long distances should be sanctioned at the instance of a company whose quantum of interest in the proposed route is insignificant. But this does not seem to be the right construction to be put upon the Act. The subject is traffic passing over continuous line made up of the railways of two or more companies. By the Act of 1854, each company is to afford such traffic all reasonable facilities, and there is to be no obstruction to the public desirous of using several railways as a continuous line; and any of the public may apply to enforce, effect being given to the Act should any reasonable facilities be withheld. Then, in 1873, it is further enacted that the facilities given by the earlier Act shall include under certain conditions through rates, these conditions being that through rates are asked for by one of the railway companies concerned, that the granting of what is so asked is in the interest of the public, and that the route, to which the through rates are applicable, is a reasonable route. For the particular facility therefore of through rates, an application by a railway company is required: but within that limit the condition is general, and the smallest company stands on a footing of equality with the largest, and though the power of proposing a route ought not to be used for no better purpose than to take traffic from one company and give it to another, the means by which the Act intends that companies, large or small, shall not suffer in that way, are to be found in the two other conditions, and ought not to be sought to be obtained by holding that companies have no *locus standi* given them to claim a through rate when their interest in the route is relatively inconsiderable."

Who can propose through rates:—Through rates can be proposed by any railway companies whose lines are part of a through route, and who though not themselves working, have nevertheless a substantial interest in the traffic of their lines. *Greenock & Wemyss Bay Ry. Co. v. Caledonian Ry. Co.* (No. 3) 2 Ry. & Ca. Tr. Cas. 227; affirmed by the court of session in 3 Ry. & Ca. Tr. Cas. 145; *Central Wales & Carmarthen Junction Ry. Co. & Mid. Wales Ry. Co. v. G. W. Ry. Co., L. & N. W. Ry. Co., Mid. Ry. Co. and Pembroke & Tenby Ry. Co.* 4 Ry. & Ca. Tr. Cas. 110.

In an application for through rates by a railway company which had agreed with another railway company for the carriage of passengers by steamers in connection with their lines, it was held that such steamers and the traffic carried

thereby were within the provisions of S. 11 of the Regulation of Railways Act, 1873. *Greenock & Wemyss Bay Ry. Co. v. Caledonian Ry. Co.* (No. 3) *Supra*.

Whom right to apply is lost.—An application by a Steam Packet Company for through passenger rates between K. & L. via the company's vessels and L. & N. W. Ry. Co. was refused on the ground that the Steam Packet Company had agreed that such rates were to be fixed by the railway company. *City of Dublin Steam Packet Co. v. L. & N. W. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 10.

The Commissioners generally refuse through rates in cases where the validity of an agreement entitling a railway company to through rates is disputed. *Caledonian Ry. Co. v. Greenock & Wemyss Bay Ry. Co.* (No. 2) 4 Ry. & Ca. Tr. Cas. 70.

Agreement must be definite.—To constitute an arrangement for "using" steam vessels within the section, the agreement between the railway company and the owner of a steam vessel must have been definite, and must create an obligation on the part of the steam-vessel proprietor to ply between the specified ports, *Caledonian Ry. Co. v. Greenock & Wemyss Bay Ry. Co.* (No. 2) *supra*.

When through booking not an arrangement for the "use" of vessels.—Where through booking existed between A & B for the carriage of traffic by a steam boat for the sea part of the journey between these places, it was held that such arrangement did not amount to an "use" of the steam-boat so as to make S. II of Regulation of Railways Act, 1873 applicable to them and to enable the owners of the steam boat to apply for a through rate between A and C under that section. *Ayr Harbour Trustees v. G. & S. W. Ry. Co.* (No. 1) 4 Ry. & Ca. Tr. Cas. 81; *Caledonian Ry. Co. & others. v. Greenock. W. B. Ry. Co. & others.* 4 Ry. & Ca. Tr. Cas. 135.

Where validity of agreements disputed, no through rates.—Where validity of an agreement entitling a railway company to through rates is disputed, orders as to through rates will not be granted. *Caledonian Ry. Co. v. Greenock & Wemyss Bay Ry. Co.* (No. 2) *Supra*

Rates must be equal.—A railway company cannot make a distinction in its rates for the same railway journey. Thus in a case in which a railway company carried traffic to two ports, it was held that the rates in respect of the same must be in proportion to the distance on both lines. *Ayr Harbour Trustees v. G. & S. W. Ry. Co.* (No. 2) 4 Ry. & Ca. Tr. Cas. 90.

45. A railway administration may charge reasonable terminals.
Terminal.

Notes.—This section recognizes, but does not create, the right to charge "terminals," that is, *all* terminals.

Law before the passing of the Act.—Before the passing of this Act, there was no statutory provision as to the charging of terminals. The Indian railway

companies could therefore by agreement make certain charges in the nature of "terminals," while State lines were, in this respect under no restrictions at all.

Break of bulk-Terminals:—In the original Draft of this Act, terminals were defined as charges for loading, unloading, carrying, weighing and covering goods at a terminal station; and the definition of a terminal station included a station at which a break of bulk is rendered necessary by a difference of gauge crossing at a ferry or other cause. Under sec. 3 (14) as it now stands, all the charges specified in the draft are allowable as terminals; and while there is no express mention of break of bulk, it appears open to the commissioners to decide, in cases where break of bulk is rendered necessary, what, if anything, is a reasonable terminal under the circumstances.

Terminals:—For definition See. Sec. 3 (14) Supra.

The definition is not exhaustive. The word 'terminals', in the English Act of 1888, is made to include various charges which, in previous decisions of the Courts, had been held not to rank as such, but it is not made to exclude anything which may properly be called a terminal. The Legislature seems to have intentionally left it open to the Commissioners to settle what charges (when reasonable) are allowable as terminals in addition to those specified in the definition.

According to Hodges on Railways, terminal charges are charges for loading and unloading and other services of a like nature which railway companies perform for their customers when the work of carrying is over.

"Terminal charges" are usually levied on account of the carrying of the goods to and from the waggon, loading and unloading them on and from the waggon, and for the use of the company's premises where the goods frequently remain for some time before they are taken away. Such charges, if not strictly perhaps "tolls", are certainly charges for performing of services, if not "necessary," at least "convenient" for the working of the Railway. *Laljee Shamjee v. G. I. P. Ry.* 16 Bom 434

Power of Commissioners to fix terminals:—See Sec. 46 p. 119

In England, the Commissioners have power, under, Sec. 15 of the Regulation of Railways Act. 1873 (36 & 37 Vict. c. 48), of hearing and determining any question or dispute that may arise with respect to terminal charges on any railway.

High Court has no jurisdiction to entertain claims relating to terminals:—Terminal charge means the charge for the use of the goods station, and for the various duties which the Company, as common carriers, perform in connection with the goods consigned to them for carriage. The railway company is entitled to levy terminal charges on the goods carried by them subject only, as to the rates and amounts thereof, to the sanction of Government, and under Ss. 41, 45 and 46 of Act IX of 1890, the High Court has no jurisdiction to consider or entertain a claim relating to terminals charged by the company subsequent to that Act. *Laljee Shamjee v. G. I. P. Ry.* 15 Bom. 537 at pp. 541 and 542.

46. (1) The Governor General in Council may, if he thinks fit, refer to the Commissioners for decision any question or dispute which may arise with respect to the terminals charged by a railway administration, and the Commissioners may thereupon decide what is a reasonable sum to be paid to the railway administration in respect of terminals.

Power of Railway Commission to fix terminals.

(2) In deciding the question or dispute, the Commissioners shall have regard only to the expenditure reasonably necessary to provide the accommodation in respect of which the terminals are charged, irrespective of the outlay which may have been actually incurred by the railway administration in providing that accommodation.

Sub-section 1 is adapted from S. 15 of "The Regulation of Railways Act 1873" (36 & 37 Vict. C. 48) which runs as follows:—

"The Commissioners shall have power to hear and determine any question or dispute which may arise with respect to the terminal charges of any railway company, where such charges have not been fixed by any Act of Parliament, and to decide what is a reasonable sum to be paid to any company for loading and unloading, covering, collection, delivery, and other services of a like nature; any decision of the commissioners under this section shall be binding on all courts and in all legal proceedings whatsoever."

And sub-section 2 is adapted from the last sentence of S. 24, clause 1 of "The Railway and Canal Traffic Act, 1888 (51 & 52 Vict. C. 25) which is as follows:—

"In the determination of the terminal charges of any railway company, regard shall be had only to the expenditure reasonably necessary to provide the accommodation in respect of which such charges are made, irrespective of the outlay which may have been actually incurred by the railway company in providing that accommodation."

The Indian Legislature while framing sub-section 1 of the present section, (46) omitted the last two lines after the word "nature" from S. 15 of "The Regulation of Railways Act, 1873" and thus a distinction has arisen here between the amounts allowed for "terminal station" and the "conveyance" for which such charges could be made.

In *M. S. & L. Ry. Co. v. Pidcock* (No. 2) 10 Ry. & Ca. Tr. Cas. 150, Sir F. Peel said:—"The rate (conveyance rate) is for conveyance by merchandise train, and this will include any work which is incidental to such conveyance and for the performance of which it is reasonable to use the train engine, as for example, when at a junction with the main line of either a station siding or a private siding the train has to pick up or throw off trucks, the work of hauling or shunting the trucks over the points at the junction and over so much of the siding as the keeping of

main line clear of obstruction may require. But conveyance other than this off the main line does not seem to come within sec. 2; and, further, to hold otherwise would be giving the word "conveyance" a meaning beyond its ordinary sense in the language of railway acts according to the decision in Hall's case."

At page 158 of the same case he said:—"A station terminal is for the use of the accommodation or staff of a terminal station after conveyance is at an end, and understanding "conveyance" in the sense to which it is restricted in Hall's case, goods arriving at a station to which they are consigned for delivery, and which upon arrival have to be hauled a greater or less distance to be in a position where they can be unloaded and delivery given, are liable to a terminal charge."

Terminal charges:—As to what are terminal charges. See *Hall & Co. v. London, Brighton and South Coast Ry. Co.* L. R. 15 Q. B. D. 505; see also 15 Bom. 537; 16 Bom. 434 and Sec. 45 p. 117 and (1920) 2 K. B. 574.

Authority to charge terminals:—An authority to charge terminals must be express. Thus where by a special act, a railway company, as common carriers, were required to carry goods and to afford all reasonable facilities and convenience for loading and unloading them &c. to all persons intending to send them on their railway. It further empowered the company to demand a toll not exceeding 3 d. per ton per mile for their carriage. On the company charging 1 s. per ton for services performed, accommodation afforded and expenses and risks incurred in and about the receiving, loading &c. the goods, it was held that the company had no right to make such charges. *Pegler v. Monmouthshire Ry. Co.* 30 L. J. Ex. 249; *Howard v. Mid. Ry. Co.* 3 Ry. & Ca. Tr. Cas. 253; see however *L. & N. W. Ry. Co. v. Price* (11 Q. B. D. 485; 52 L. J. Q. B. 754) where the railway company were held entitled to make a reasonable charge for the use of the weighing machine (for weighing coal), although they had no express statutory powers to do so; see also *Barr Mooring & Co. v. L. & N. W. Ry. Co.* (1905) 2 K. B. 113; 75 L. J. K. B. 540.

Special Service:—A "Special Service" charge may be made by a railway company "If they are required for the convenience of the siding owner to do work on his siding, and where they are so required, then, if by reason of the insufficiency of the siding or otherwise, that work involves extra work on their own line, that extra work may be a ground for an extra charge."—Per Wright. J. in *N. S. Ry. Co. v. Salt Union* 10 Ry. & Ca. Tr. Cas. at p. 168.

Rebate:—The expression "rebate in respect that the Ry. Co. does not provide station accommodation or perform terminal services" means that a rebate is to be given in proportion as or to the extent that the company do not provide station accommodation or do not perform terminal services. *Pidcock & Co. v. M. S. & L. Ry. Co.* 9 Ry. & Can. Tra. Ca. 45.

A trader either for his own convenience or voluntarily gives assistance to the company in loading, unloading or weighing of goods, he is not entitled to any allowance for any such services *Edwards v. G. W. Ry. Co.* 11 C. B. 588; nor for

conveyance on the ground that he does not require certain station services to be performed by the company. *Howard v. Mid. Ry. Co.* 3 Ry. & Ca. Tr. Cas. 353; but if such services are incidental to the ordinary business of a common carrier, he ought to have the option of either having them performed by the company or of performing them himself. *L. & Y. Ry. Co. v. Gidlow* (No. 1) 42 L. J. Ex. 129.

As to the reduction of rate for conveyance in the case of a railway company not providing trucks, a proper deduction is to be made, even though the rate charged is less than the maximum. The amount of the rebate should represent the cost to the trader of providing his own waggons. *Cowdenbeath Coal Co. v. N. B. and Gal. Ry. Cos.* 8 Ry. & Ca. Tr. Cas. 251.

If a company choose to protect themselves by charging only the rate, less the allowance for collection, they could do so; but if the goods are charged for at a collection and delivery rate, they are bound to pay a reasonable sum to the applicant if he performs the collecting service. *Menzies v. Caledonian Ry. Co.* 5 Ry. & Ca. Tr. Cas. 306.

Rebate—Company entitled to make a counterbalancing charge:— Where a rebate is given on account of terminal accommodation and services not being provided, a railway company is entitled to make a counterbalancing charge for the special services rendered by them. *Gilstrap v. G. N. & Mid. Ry. Cos.* 11 Ry. & Ca. Tr. Cas. 265.

Station accommodation:—“Where a railway company provide station accommodation or perform terminal services, it is only reasonable to suppose that station and service terminals are equally with the charge for conveyance a component part of their rates.—Per Sir F. Peel in *Tennant & Co. v. Caledonian and N. B. Ry. Cos.* 10 Ry. & Ca. Tr. Cas. 194 at p. 207.

What charges were allowed —The railway company are entitled to make the following charges:—

- (1). A railway company entitled to make a reasonable charge “for loading, unloading, covering and for delivery and collection, and any other services incidental to the business or duty of a carrier, where such services or any of them, are or is performed by the said company” have a right to make a reasonable charge (a) for share of expenses of providing and maintaining station accommodation in dealing with merchandise traffic as carrier's and (b) for share of expenses of station attributable to carrier's services. *Soverby v. G. N. Ry. Co.* 7 Ry. & Ca. Tr. Cas. 156.
- (2). Where the train, by which the private siding traffic arrives, conveys it as near to its destination as such a train on the particular portion of the line can be expected to come and deposits it for delivery in reception sidings, an extra charge can be allowed for the subsequent taking of the traffic from the reception siding for delivery. *Watkinson v. Wrexham Ry. Co.* (No. 1) 3,

& Ca. Tr. Cas. 5; *Portway v. Colne Valley Ry. Co.* 10 Ry. & Ca. Tr. Cas. 211; and *Vickers & Co. Ltd. v. Mid. Ry. Co.* 11 Ry. & Ca. Tr. Cas. 249.

- (3). Where unloading & other services are necessary in the course of transhipment from the line of one company to that of another having a different gauge, a reasonable charge may be made. *Tal-y-llyn Ry. Co. v. Cambrin Ry. Co.* 5 Ry. & Ca. Tr. Cas. 122.
- (4). A charge for providing, maintaining, and working and signalling and interlocking apparatus at a private siding. *Dunkirk Colliery Co. v. M. S. & L. Ry. Co.* 2 Ry. & Ca. Tr. Cas. 402.
- (5). A charge for (a) extra shunting beyond the Junction point (b) Clerkage and (c) for the provision and working of extra signals that may be necessary by reason of the traffic to and from such private siding. *Portway v. Colne Valley & G. E. Ry. Cos.* 10 Ry. & Ca. Tr. Cas. 211.
- (6). So also one for allowing the defendant to use a weighing machine to weigh coal, although the company had no express statutory powers to charge for the use of weighing machines, *L. & N. W. Ry. Co. v. Price* 11 Q. B. D. 485.
- (7). (a) Also one for shunting as attributable to carrier's services. *Sowerby v. G. N. Ry. Co.* (supra). (b) So also where the necessity for shunting was due to the inconvenient position of a Private siding. *Portway v. Colne Valley & G. E. Ry. Cos.* (supra), *Furness Ry. Co. v. Vicars, Sons & Maxim Ltd.* 12 Ry. & Ca. Tr. Cas. 81.
- (8). So also one for taking trucks across the railway company's goods yard to a private siding which had no direct connection with the main line. *M. S. & L. Ry. Co. v. Pidcock* (No. 2) 10 Ry. & Ca. Tr. Cas. 150.
- (9). For cartage when performed by the railway company, *Sowerby v. G. N. Ry. Co.* (Supra).
- (10). For siding rent. *Mid. Ry. Co. v. Sillis* 9 Ry. & Ca. Tr. Cas. 161; *Mid. Ry. Co. v. Black* 10 Ry. & Ca. Tr. Cas. 142; *Manchester & G. Federation coal owners v. L. & Y. Ry. Co.* 10 Ry. & Ca. Tr. Cas. 127.

What charges were dis-allowed:—

- (1). A railway company was entitled to make a charge "for loading, unloading, and covering and the delivery and collection of goods, and other services incidental to the business of a carrier where such services respectively shall be performed by the company". A charge for station accommodation by such company would be disallowed, if the service be incidental to 'conveyance' and for which no extra charge could be made. *Kempson v. G. W. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 426.
- (2). A charge for providing and maintaining roads for passing of carts for carriage of coal traffic. *Isle of Wight (Newport Junction) Ry. Co. v. Isle of Wight Ry. Co.* 4 Ry. & Ca. Tr. Cas. 128.
- (3). A charge for providing, maintaining, and working, signalling and interlocking

- apparatus at a Junction with a branch line owned by the company *Neston Colliery Co. v. L. & N. W. & G. W. Ry. Cos.* 4 Ry. & Ca. Tr. Cas. 257.
- (4). A charge for weighing by a company entitled to make a reasonable charge for loading, unloading, covering and for delivery and collection of traffic. *Hall v. L. B. & S. C. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 398. The terms *loading and unloading* do not comprehend more than the labour of packing and unpacking a goods train or a goods truck, whether done by hand or machinery *Berry v. L. C. & D. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 310.
- (5). A charge for providing signals, cabins and other apparatus in connection with private sidings. *N. S. Ry. Co. v. Salt Union Ltd.* 10 Ry. & Ca. Tr. Cas. 161.
- (6). A charge for allowing coals to remain on some ground adjoining the defendant company's line. *L. & Y. Ry. Co. v. Gidlow* (No. 2) 45 L. J. Ex. 625; for marshalling coal traffic at defendant company's station. *Isle of Wight's case* (supra).
- (7). (a) A charge for unloading platforms for coal traffic—*Isle of Wight's case* (supra).
 (b) A Company entitled to charge "for delivery and collection of traffic and other services incidental to the business of a carrier", for shunting trucks containing coals—*Isle of Wight's case* (supra).
- (8). A charge for shunting trucks directly from the main line into a private siding and *vice versa* provided that the mode in which the Junction has been effected is such that a railway company incur no greater expense in connection with it than is involved in stopping a train specially at the Junction siding, and either coupling trucks there and depositing them in the siding clear of the points, or drawing out trucks ready marshalled and attaching them to the train. *Kempson v. G. W. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 426; *Portway v. Colne Valley Ry. Co.* 10 Ry. & Ca. Tr. Cas. 211.
- (9). A charge for services rendered to traders at or in connection with private sidings, which are usually shunting and marshalling, they being incidental to conveyance. *Sowerby v. G. N. Ry. Co.* 7 Ry. & Ca. Tr. Cas. 156; *M. S. & L. Ry. Co. v. Pidcock* (No. 2) 10 Ry. & Ca. Tr. Cas. 150;—(*Neston Colliery Co. v. L. & N. W. Ry. Co. and others.* 4 Ry. & Ca. Tr. Cas. 257 followed).
- (10). A charge for invoicing and taking account of consignments and keeping a staff for that purpose and for providing and maintaining siding and office accommodations. *Isle of Wight's case* (supra).
- (11). A charge for weighing, checking, clerkage and watching. *Perry, v. L. C. & D. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 310.
- (12). A charge by a railway company entitled to make "a reasonable charge for loading and unloading goods" for sheeting and for covering hops and also for providing the said traffic. *Perry, v. L. C. & D. Ry. Co* (Supra)
- Sidings not belonging to the company:**—As to what are "sidings not belonging to the company see *Pidcock's case* (Supra), *Huntington v. L. & Y. Ry. Cos.* 11 Ry. & Ca. Tr. Cas. 237; *Girardot v. G. E. Ry. Co.* 11 Ry. & Ca. Tr. Cas. 244

CHAPTER VI.

WORKING OF RAILWAYS.

General.

47. (1) Every railway company and, in the case of a railway administered by the Government, an officer to be appointed by the Governor General in Council in this behalf, shall make general rules consistent with this Act for the following purposes, namely:—

General rules

- (a) for regulating the mode in which, and the speed at which, rolling-stock used on the railway is to be moved or propelled.
- (b) for providing for the accommodation and convenience of passengers and regulating the carriage of their luggage.
- (c) for declaring what shall be deemed to be, for the purposes of this Act, dangerous or offensive goods, and for regulating the carriage of such goods;
- (d) for regulating the conditions on which the railway administration will carry passengers suffering from infectious or contagious disorders, and providing for the disinfection of carriages which have been used by such passengers;
- (e) for regulating the conduct of the railway servants;
- (f) for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner; and
- (g) generally, for regulating the travelling upon, and the use, working and management of, the Railway.

(2) The rules may provide that any person committing a breach of any of them shall be punished with fine which may extend to any sum not exceeding fifty rupees, and that in case of a rule made under clause (e) of sub-section (1), the railway servants shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the railway administration from his pay.

(3) A rule made under this section shall not take effect until it has received the sanction of the Governor General in Council and been published in the Gazette of India:

Provided that, where the rule is in the terms of a rule which has already been published at length in the Gazette of India, a noti-

fication in that Gazette, referring to the rule already published and announcing the adoption thereof, shall be deemed a publication of a rule in the Gazette of India within the meaning of this sub-section.

(4) The Governor General in Council may cancel any rule made under this section, and the authority required by sub-section (1) to make rules thereunder may at any time, with the previous sanction of the Governor General in council, rescind or vary any such rule.

(5) Every rule purporting to have been made for any railway under section 8 of the Indian Railways Act, 1879, and appearing from the Gazette of India to be intended to apply to the railway at the commencement of this Act, shall, notwithstanding any irregularity in the making or publication of the rule be deemed to have been made and to have taken effect under this section.

(6) Every railway administration shall keep at each station on its railway a copy of the general rules for the time being in force under this section on the railway, and shall allow any person to inspect it free of charge at all reasonable times.

Clauses A to F. of sub-section 1 are adapted from Ss. 7 to 9 of the Railways Regulation Act, 1840 (3 & 4 Vict. C. 97), and S. 10 of the Railway Clauses Act, 1845 (8 & 9 Vict. C. 20), and clause G from S. 32 of the Railway Clauses Act 1863 (26 and 27 Vict. C. 92).

The last portion of Sub-section 2, from the words "and that" down to its end is adapted from S. 86 of the Canadian Railways Act, 1886 (49 Vict. C. 109).

General rules as to working and conduct of Railway servants:— For general rules as to working, conduct of Railway servants and the carriage of passengers and dangerous goods for all open lines of railway in British India administered by the Government—See Genl. Stat. R. & O. Vol. III p. 1350; for amendments in the general rules for all open lines administered by the Government as to dangerous goods, see Gazette of India, 1907, Pt. I pp. 639 and 861.

Scope of the section:—This section will remove any doubt as to the validity of any existing rules and provides that, when rules have once been published in the Gazette of India, they may be extended to a railway by a reference to that Gazette and an announcement, of their adoption for the railway, without being again published at length in the Gazette (Statements of Objects and reasons).

It seems that the legislature in enacting Ss. 26 & 29 of Act XVIII of 1854 (Ss. 47 & 101 of the present Act,) had chiefly in view the protection of the public, and especially of passengers, and other persons not directly connected with th

railway; and it is very doubtful whether it was the intention of the Act to make the officers responsible for risks to fellow-servants arising out of the particular duty in which they are engaged. *Queen v. Flood* 8 W. R. 33 (Cr.)

Standard time:—The working of trains between stations shall be regulated by the standard time prescribed by the G. G. in Council, which must be sent daily to all the principal stations on the railway—G. R. R. Part 4 r. 57.

Adherence to Advertised time:—No passenger train or mixed-train shall be despatched from a station before the advertised time. r. 58. (*Ibid*).

Imposing conditions for receiving goods:—A railway company may make general rules for regulating the terms on which it will warehouse or retain goods at any station *Jalinsingh v. The Secy of State for India* 31 Cal. 951.

Object of the making of rules—Traffic working orders:—The object and the result of making rules under Sec. 47 (1) of the Act with the sanction of the G. G. in Council are only to make their breach an offence punishable by the Court. Traffic working orders are not general rules published under S. 47 of the Act. They are not available to the public and in no way resemble a power of attorney from which the station master's authority is derived. They form merely a domestic code which every organisation must formulate for the guidance of its employees. *Re. Komaran & Govindasami*, (1922) 42 Mad. L. J. 21.

Reasonableness of rules:—The rules must be consistent with the Act, i.e. reasonable; otherwise they will be void and inoperative. *Jalinsingh, v. Secy of state for India* (Supra). *Ramchandra v. G. I. P. Ry.* 17 Bom. L. R. 496; *Narsing Girji v. G. I. P. Ry.* 51 Ind. Cas. 309; 21 Bom. L. R. 406. see also s. 54

Validity of Rule under S. 47:—A rule lawfully made under S. 47 of the Rys. Act providing for special accommodation or for the special convenience of a particular individual or of a particular class of individuals and for the general convenience of the travelling public is within the four corners of the Act. *Brijbasi Lal v. Emp.* (1920) 55 Md. Cas. = 18 A. L. J. 254; 21 Cr. L. J. 294 = 42 Act. 327.

Rule limiting statutory liability is ultra vires:—If a rule has been made by a company in virtue of the powers conferred upon it, by Sec. 47, limiting the statutory liability imposed upon it by Sec. 72, then that rule is inconsistent with the provisions of the Act and is of no effect. It is not open to the Ry. Co. to enact, by means of a rule that although as a matter of fact goods have been delivered to a duly authorised servant of the administration to be carried by the Ry., nevertheless the Court shall not deem them to have been so delivered unless and until the railway servant has performed a particular Act. e.g. granted a receipt. Any such rule which is put forward as controlling or limiting the statutory liability imposed by Sec. 72 of the Rys. Act. is inconsistent with the provisions of the Act and is of no effect. *Sohanlal v. E. I. Ry.* (1922) 20 All. L. J. 31; *Ramchandra v. G. I. P. Ry.* 39 Bom. 485; *Narsing Girji Manuf. Co. v. G. I. P. Ry.* 21 Bom. L. R. 406.

Rules not ultra vires—Guard's duty to see the pair of points to ensure the safety of his train:—The Rules in Order VII of the G. I. P. Railway working Time Table, though not made under S. 47, are yet absolutely within the power of the company to impose, so long as they are not inconsistent with the Railway Act or with the General Rules made under that Act. The Rules in Order VII are merely administrative orders or executive directions; nevertheless, the company's servants are bound to obey them. There is no inconsistency between the rules in order VII and the Railways Act or the General Rules made under that Act.

The object of the Rule I, Order VII, is that the guard of a train waiting at a station on a loop line in order to enable another train running in the opposite direction to cross at the station, is to prevent a collision with his own train. In other words, he is to secure the safety of his own train by seeing to the particular pair of points which lead into the line occupied by his train, *Emp. v. D. B. Weir* 12 Bom. L. R. 930.

Rules for charging wharfage in cases of delay in taking delivery if not sanctioned are not binding:—Rules framed by a particular railway company for charging wharfage on goods for delay in taking delivery which have not received the sanction of the G. G. in Council and published in the Gazette of India under sub-section 3 of S. 47 of the Railways Act are not binding. *Harilal Sinha v. Bengal Nagpur Railway Co.* 13 Cal. L. J. 150; 9 Ind. Cas. 331.

A Rule whereby goods were to stand at owner's risk until a receipt is granted for them is inconsistent & unreasonable:—Rules framed by a railway company under S. 47 & 54 whereby goods were to stand at owner's risk and the railway company were not to be liable therefore, until a receipt has been granted by them were inconsistent with the Act and unreasonable and the railway company will be held liable to pay compensation for the loss incurred, *Ramchandra v. G. I. P. Railway* (1915) 17 Bom. L. R. 496; 39 Bom. 485; *Jalim Singh v. The Secy. of State* 31 Cal. 951. *Narsing Girji v. G. I. P. Ry.* 51 Ind. Cas. 309. overruling *Bonnamal v. The Secy of State* 23 All 367, and *Slim v. G. N. Railway* 14 C. B. 647.

Rule should be consistent with the Act:—A rule made by railway Co. under S. 47 to the effect that "Persons tendering amongst their luggage article, not classifiable as such, do so at their risk" under para 2 of S. 47 the company can only make a Rule "Consistent with the Act" for the purpose of requesting the carriage of "passenger's "luggage" and the above rule being inconsistent with the Act and *ultra vires* it does not absolve the company from their liability under S. 72. *Velayat Hossein v. Bengal & N. W. Ry. Co.* 13 Cal. W. N. 847 = 35 Cal. 819 = 3 Ind. Cas. 470.

Rules exempting railway from liability for negligence of servants after goods available for delivery:—Tariff Rule 464 (v) of N. W. Railway framed under this section is wide enough to exempt the railway from liability to

pay for damage caused to goods by the negligence of their servants after the same have been made available for delivery to the consignee, and time fixed by the rules for taking delivery has expired.

The canon of construction that in all contracts or grants, words of exception are construed strictly against the party in whose favour they are inserted, is out of place in the consideration of a statutory rule or order which must be construed according to the plain meaning of the words used. *Ajmal v. Secy. of State* 6 Sind. L. R. 103; 13 Lawyer (1912) 852.

Rule under 1 (g).—Rule made under sub-section 1 (g) of S. 47 of the Railways Act cannot refer to a trespass by a member of the general public upon a railway line. 4 P. R. 1914.

A bye-law that "Under no circumstances duplicate tickets will be issued, and in case of tickets being lost or mislaid, fresh tickets will be issued on payment at full charges and fresh deposits" do not fall within the purview of sec. 47 (1) (g) and do not require the sanction of Government as provided for therein. This bye-law is not repugnant to the statute and as it is not repugnant, it could not be held unreasonable. *Lentini v. B. B. & C. I. Ry.*, Times of India, 23-4-1903.

General rules published in Gazette of India—Adoption by a Railway Company.—The general rules framed by the G. G. in Council and published in the Gazette of India do not become operative as the rules of any individual company merely upon their adoption by the company. It must be shewn that the particular railway company made rules and that those rules have received the sanction of the G. G. in Council and have been published in the manner prescribed by the Act. *Harilal Sinha v. Bengal Nagpur Railway Co.* 15 Cal. W. N. 195; 13 Cal. L. J. 150; this ruling has been explained and distinguished in *B. N. Railway Co. v. Rampratap* wherein it was held that rules adopted by a railway company though not originally prepared by it, would come within the description of "General Rules" referred to in Sec. 47, and the rules so adopted, if then sanctioned by the G. G. in Council, and published in the Gazette of India would satisfy the requirements of the section. *B. N. Ry. Co. v. Rampratap* 15 Cal. L. J. 215, 16 Cal. W. N. 360, followed in *Surajmal v. E. I. Railway Co.* (1913) 17 Cal. W. N. 359.

Improper rules.—If a master frames rules carelessly or improperly for the management of the business, and these lead to dangers, which by proper rules might have been avoided he is liable *Vase v. L. & Y. Ry. Co.* 27 L. J. Ex. 240.

Breach of rules framed under a statute.—Where a statute gives power to an authority to make regulations, a breach of the regulations so made is an offence against the provisions of the statute. *Willingate v. Harris* (1909) 1 K. B. 57; but if a rule framed to secure safety, is habitually violated to the knowledge of the workman himself, he cannot recover on the ground of non-observance of the rule. *Caswell v. Worth.* 5. E. & B. 849. -

Rules made by a railway company create no criminal offence:—Neither S. 47 nor the rules made by the railway company under that section create any criminal offence. The section merely gives to the company power to frame rules and to enforce them by imposing fines on its own officers. *In Re Basant Kumar Banerjee*. 11 C. W. N. 583.

Suit for damages for defamation:—Where the plff. was a guard in the service of the defts, a railway company, and the defts, dismissed him on the ground that he had been guilty of gross neglect of duty, and published his name in a printed monthly circular addressed to their servants stating in it that he had been dismissed and the ground of his dismissal, it was held that such circular was privileged if published bona fide and without malice towards the plff. *Hunter v. G. N. Ry. Co.* (1891) 2 Q. B. 189.

A railway guard having reason to suppose that a passenger travelling by a train from A to B had purchased his ticket at an intermediate station, called upon the plff. and other passengers to produce their tickets. As a reason for demanding the production of the plff's ticket he said to him, in the presence of other passengers, "I suspect you are travelling with a wrong (or false) ticket," which was the defamation complained of. The guard was held to have spoken the above words bona fide. Held, that the plff. was not entitled to damages. *S. I. Ry. Co. v. Ramkrishna*. 13 Mad. 34.

Who is a servant of the Co.,—A servant of the delivery Agent of the Co., is a servant of the Co., though when he commits felony, he is not acting on behalf of the Co., *Machu v. L. & S. W. Ry. Co.* 2 Ex. 415; 17 L. J. Ex. 271. *Doolan v. Midland Ry. Co.*, L. R. 2 A. C. 792. *Stephens v. L. & S. W. Railway* 18 Q. B. D. 121. When a person by falsely representing himself to be the servant of the company obtains goods from a clerk of the Co., the Co. are not estopped from denying that he is their agent. *Way v. G. E. Ry. Co.*, 1 Q. B. D. 692.

Notice before leaving service:—Every railway servant shall before leaving the service, give the railway Administration the notice specified in his agreement, (if any) or, if no notice is so specified, then one month's notice in writing. G. R. R. Part I P. 242.

Relinquishment of employment without master's consent does not entitle the servant to salary for broken portion of month:—An office clerk engaged on a monthly salary is not entitled to any salary for the broken portion of a month in the course of which he leaves his service without the consent of his employer (*Ramji v. Little* 10 Bom. H. C. Rep. 57 referred to) *Ralli Brothers v. Ambikaprasad*. 35 All. 132.

Servant sending resignation during leave:—The plff, a Station M^r in the deft company's service, proceeded on 14th February on 3 months' leave without pay. On the 5th May, the plff. wrote to the defts expressing his willingness to serve any longer and asking them to accept his resignation

hours. No answer was sent to this and the plff. did not return to duty on the 14th May, i. e. on the expiration of his leave. Subsequently, on or about 19th May the plff. was served with a notice, dated 13th May, that he was dismissed from service. The plff. contended that in as much as he permanently absented himself, all relationship between the parties ceased, and there was no service in existence from which he could be dismissed:—Held, that the plff's letter of the 5th May was an intimation of his intention not to perform the service to which he was bound, And that therefore, there was on the 13th May, an anticipatory breach which in the events entitled the defts to determine the contract by dismissing the plaintiff.

Per Jenkins C. J.:—A contract of service is continuing in its nature, and its continuance and the obligations under it can only be determined in certain defined modes. Mere resignation is not sufficient, unless it be assented to, or unless it comply with those terms which the law implies or the prior agreement of the parties may permit. *Ganesh v. G. I. P. Railway* 2 Bom. L. R. 790.

Conduct of railway servants generally:—The conduct of all railway servants must be prompt, civil and obliging—G. R. R. part 1, 233; See also *Mathuradas v. Secy. of State for India*. 3 S. L. R. 60. The station master must see that all railway servants at his station behave respectfully and civilly to the public and to the passengers of every class. G. R. R. Part 1, 257.

Dismissal of railway servant for "dishonesty"—Dishonesty includes dishonesty outside company's service:—The deft company's servants were obliged to contribute a certain percentage of their wages to the Coy's, 'Superannuation Fund, and the company contributed to the Fund a sum equal to the amount subscribed by the contributors. By rule 5 of the rules of the superannuation fund, any contributing member dismissed from the service for dishonesty or retiring to avoid such dismissal, shall forfeit all his contributions. Held that "dishonesty" included dishonesty outside the service of the company as well as dishonesty towards the company. *Thyre vs. London, Brighton, and South Coast Ry.*, 22 T. L. R. 240.

Gratuities to Officers:—A Railway Co., may out of its funds give gratuities to servants or directors of the Company. *Hutton v. Westcook Ry. Co.*, 23 Ch. D. 654.

Meaning of the word "Day"—A rule in Coaching Traiff, framed under S. 47 that the interval between the time of issue of a return ticket and the midnight of the same day should be counted as one day, is not unreasonable and therefore not *ultra vires*. When the day of the expiry of the return journey is noted on the ticket itself, the purchaser must be held to have due notice of the rule defining a "Day" for the purpose of the return journey ticket. *The Secy. of State v. Sahij Ram* 8 Sind. L. R. 14; (1914) 15 Lawyer 573.

Duties of Securing Safety:—(1) Every railway servant shall be bound:—
(A.) To see that every exertion is made for ensuring the safety of the public.

- (B.) Promptly to report to his immediate superior any occurrence affecting the safe or proper working of the railway which may come to his notice.
- (C.) To render on demand all possible assistance in the case of an accident or obstruction.

* * * * *

Must take immediate steps such as the circumstances of the case may demand, to prevent accident R. 234. (1b).

Penalty for not making rules as required by this Section:—See Sec. 90.

Penalty for not having certain documents kept or exhibited at Stations under Sections 47, 54 or 65:—See S. 89.

For recovery of penalties:—See Secs. 97 and 98.

Penalty for endangering the safety of persons by railway servant disobeying rules:—See Sec. 101.

Arrest for offences against certain Sections:—See Sec. 131.

What magistrates have jurisdiction to try offence under this Act:—See S. 133.

For place of trial:—See S. 134.

General rules for open lines:—See Govt. of India Notif. No. 801 dated 24th March 1905 and Railway Board Circular No. R. T. 89 A. dated the 8th September 1906 sanctioning general rules for railways in India.

Communication between passengers and railway servants in charge of trains:—See Sec. 62.

Needlessly interfering with means of communication in a train:—See Sec. 108.

Reservation of compartments for females:—See Sec. 64 and the notes thereto

Maximum number of passengers:—See Sec. 63.

Entering compartment reserved or already full or resisting entry into a compartment not full:—See Sec. 109.

Smoking:—See Sec. 110.

Carriage of dangerous or offensive goods:—See Sec. 59

Penalty for unlawfully bringing dangerous or offensive goods upon a railway:—See Sec. 107.

Carriage of persons suffering from infection or contagious disorders:—See Sec. 71.

Penalty for being or suffering person to travel on railway with infections or contagious disorders:—See Sec. 117.

Provisions with respect to rules:—See Sec. 143.

48. Where two or more railway administrations whose railways have a common terminus or a portion of the same line of the rails in common, or form separate portions of one continued line of railway communication, are not able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, the Governor General in Council, upon the application of either or any of the administrations, may decide the matters in dispute between them, so far as those matters relate to the safety of the public, and may determine whether the whole or what portion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively.

This section is adapted from S. 11 of the Railways Regulation Act, 1842. (5 & 6 Vict. C. 55). and Sec. 9 of the Railway Clauses Act, 1863 (26 & 27 Vict. C. 92).

Scope of the Section.—This section provides for the settlement by the G. G. in Council of difference between railway administrations respecting the use of any common terminus or line of rails where the differences are such as to be likely to affect the safety of the public—(Statements of Objects and Reasons).

Delegation of powers.—See Ss. 4, 7 and 144.

English Law.—Passenger traffic—continuous line.—Where an agreement between two railway companies does not provide for the carrying of through passenger and coaching traffic, the Commissioners have jurisdiction to entertain an application under S. 2 of the Railway & Canal Traffic Act, 1854, for an order to afford due and reasonable facilities for such traffic. *Solway Junction Ry. v. Caledonian Ry. Co.* 8 Ry. & Ca. Tr. Cas. 177.

Pennalty for failing to comply with the decision under this section.—See S. 91.

49. Any railway company, not being a company for which the Statute 42 and 43 Victoria, Chapter 41, provides, may from time to time make and carry into effect agreements with the Governor General in Council for the construction of rolling-stock, plant or machinery used on, or in connection with railways, or for leasing or taking on lease any rolling-stock, plant, machinery or equipments required for use on a railway, or for the maintenance of rolling-stock.

Agreements with the Governor General in Council for construction or lease of rolling stock.

Scope of sections 49, 50 and 51.—The effect of these sections will be to confer on railway companies domiciled in India, the same privileges as are

joined by Indian Railway Companies domiciled in the United Kingdom—(Statement of Objects and Reasons).

50. Any railway company, not being a company for which the Statute 42 and 43 Victoria, Chapter 41, provides, may from time to time make with the Governor General in Council, and carry into effect or, with the sanction of the Governor General in Council make with any other railway administration, and carry into effect, any agreement with respect to any of the following purposes, namely:—

Powers of railway companies to enter into working agreements.

- (a) the working, use, management and maintenance of any railway ;
- (b) the supply of rolling-stock and machinery necessary for any of the purposes mentioned in clause (a) and of officers and servants for the conduct of the traffic of the railway ;
- (c) the payments to be made and the conditions to be performed with respect to such working, use, management and maintenance ;
- (d) the interchange, accommodation and conveyance of traffic being on, coming from or intended for, the respective railways of the contracting parties, and the fixing, collecting, apportionment and appropriation of the revenues arising from that traffic ;
- (e) generally, the giving effect to any such provisions or stipulations with respect to any of the purposes hereinbefore in this section mentioned as the contracting parties may think fit and mutually agree on:

Provided that the agreement shall not affect any of the rates which the railway administrations, parties thereto, are from time to time, respectively authorized to demand and receive from any person, and that every person shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of any railway administrations, parties to the agreement, on the same terms and conditions, and on payment of the same rates, as he would be if the agreement had not been entered into.

Scope of the Section :—See S. 49.

Delegation of powers :—See pp. 12 and 16 & S. 144 post.

Validity of working agreements :—An agreement between two Ry. C that one of them will not carry traffic over a particular portion of the line . . .

illegal. *Lancashire & Carlisle Ry. v. L. & N. W. Ry. Co.* 25 L. J. Ch. 223; 4 W. R. 220. There is no principle of public policy which renders void a traffic agreement between two lines of railway for the purpose of avoiding competition *Hare v. L. & N. W. Ry.* 30 L. J. Ch. 817.

A stipulation not to compete upon parts of the line held to be no such frauds upon the public as rendered the agreement between the Cos. invalid. *Shrewsbury & Birmingham Ry. Co. v. L. & N. W. Ry.* 17 Q. B. 652

Agreement to regulate competition—Two companies having the same termini may in order to avoid competition, come to an agreement with reference to the traffic along existing routes on their lines, with a view to distribute such traffic and the revenue derived from it between the two companies. *Hare v. L. & N. W. Ry. Co.* 2 J. & H. 80. It has however been said that such an agreement would be illegal, if it extended to future traffic upon a line of railway which the company may thereafter be empowered to construct. *Mid Ry. Co. v. L. & N. W. Ry. Co.* 2 Eq. 524 A scheme amounting to an amalgamation of two Ry. Cos., the profit and loss being brought into one common fund and divided in certain proportions is illegal. *Charlton v. Newcastle & Carl Ry. Co.* 7 W. R. 731.

51. Any railway company, not being a company for which the Statute 42 and 43 Victoria, Chapter 41, provides, may from time to time exercise with the sanction of the Governor General in Council all or any of the following powers, namely:—

Establishment of ferries and roadways for accommodation of traffic.

- (a) it may establish, for the accommodation of the traffic of its railway, any ferry equipped with machinery and plant of good quality and adequate in quantity to work the ferry;
- (b) it may work for purposes other than the accommodation of the traffic of the railway any ferry established by it under this section;
- (c) it may provide and maintain on any of its bridges, roadways for foot-passengers, cattle, carriages, carts or other traffic;
- (d) it may construct and maintain roads for the accommodation of traffic passing to or from its railway;
- (e) it may provide and maintain any means of transport which may be required for the reasonable convenience of passengers, animals or goods carried or to be carried on its railway;
- (f) it may charge tolls on the traffic using such ferries, roadways, roads or means of transport as it may provide under this

section, according to tariffs to be arranged from time to time with the sanction of the Governor General in Council.

Scope of the Section:—Sec S. 49.

No. 2140, dated the 28th Feb. 1908:—In exercise of the powers conferred by Sec. 2 of the Indian Railway Boards Act 1905 (IV of 1905) as in force in British India and as locally applied by foreign Department Notification No. 1097-F, dated 24th March 1905, the G. G. in Council is pleased to invest the Railway Board with the power conferred upon the G. G. in Council by Section 51 of the Indian Railways Act 1890 to sanction proceedings of Railway Companies in respect of the matters therein specified, subject to the condition that the Railway Board shall, in the exercise of the said power, act in accordance with the general rules or orders on the subject passed from time to time by the Government of India (see Gazette of India 1908, Part 1, p. 169).

52. Every railway administration shall, in forms to be prescribed by the Governor General in Council prepare, half-
Returns yearly or at such intervals as the Governor General in Council may prescribe, such returns of its capital and revenue transactions and of its traffic as the Governor General in Council may require, and shall forward a copy of such returns to the Governor General in Council at such times as he may direct.

Note:—This section is adapted from S. 3 of the Railway Regulation Act, 1840 (3 & 4 vict. c. 97); ss. 3 & 4 of the Regulation of Railways Act, 1868 (31 & 32 vict. c. 119); and ss. 9 & 10 of the Regulation of Railways Act, 1871 (34 & 35 vict. c. 78).

Penalties:—For failure to comply with this Section. See Ss. 87, & 88.

Carriage of Property.

53. (1) Every railway administration shall determine the maximum load for every wagon or truck in its possession, and shall exhibit the words or figures representing the load so determined in a conspicuous manner on the outside of every such wagon or truck.
Maximum load for wagons.

(2) Every person owning a wagon or truck which passes over a railway shall similarly determine and exhibit the maximum load for the wagon or truck.

(3) The gross weight of any such wagon or truck bearing on the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be fixed by the Governor General in Council for the class of axle under the wagon or truck.

This Section is adapted from S. 15 of the Railway Regulation Act, 1842 (5 & 6 vict. c. 55).

Penalty.—For failure to comply with this Section. See S. 93.

Loading.—(1) No wagon or truck shall be so loaded as to exceed the maximum gross load on the axles, fixed under S. 53. Sub-section (3) of the Indian Railways Act IX of 1890, or such less load (if any) as may have been prescribed by the Railway Administration.

(2). Except under approved special instructions, no vehicle shall be so loaded as to exceed the maximum moving dimensions, prescribed from time to time by the Railway Board, G. R. R. Part I, r. 65.

Delegation of powers.—See (Supra).

54. (1) Subject to the control of the Governor General in Council, a railway administration may impose conditions, not inconsistent with this Act or with any general rule thereunder, with respect to the receiving, forwarding or delivering of any animals or goods.

Power for railway administrations to impose conditions for working traffic.

(2) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under sub-section (1) at the station, and shall allow any person to inspect it free of charge at all reasonable times.

(3) A railway administration shall not be bound to carry any animal suffering from any infectious or contagious disorder.

Conditions.—As regards conditions sanctioned under S. 54 (1) in relation to consignment note, goods receipt note, luggage ticket, single and return ticket for animals &c., live stock ticket, Parcels way bill, risk notes &c. See Appendix C. where they are given in full.

Bye-law or rule made ultra-vires.—A started in the train of B. B. & C. 1. Ry. Co. to Delhi from Kolaba where he handed over to the railway officials seven packages and obtained a receipt thereof in which condition No. 4 provided among other things, that a written statement of the description and contents of the articles missing must be sent forthwith to the Traffic Superintendent of the District in which the forwarding or receiving station is situated; otherwise the Railway Company will be freed from responsibility.

At Delhi only six packages was delivered to A. He failed to act in accordance with the said condition. but complied with section 77 of Act IX of 1890. In the suit brought by A for recovering price of the missing or non-delivered package:—Held, that no rule or Bye-law made by any railway company which is inconsistent with or not authorised by any of the provisions of Act IX of 1890, even if sanctioned by His Excellency the G. G. in Council is valid.

Held, further that, condition No. 4, above referred to is a Bye-Law and is inconsistent with section 77, and relates to a matter not intended to be dealt with by Bye-laws under S. 54 (1) of Act IX of 1890, and is therefore ultra-vires of the railway administration and not enforceable with regard to the provisions of these sections. *Azizul v. B. B. & C. I. Ry. Co.* 3. Punj. W. R. 487=43 P. R. 353.

A railway company has cast upon it by S. 72 the duties of an ordinary bailee, but it may determine the conditions under which those duties may vest and in particular may specify the point of time at which they shall vest by rules under Ss. 47 and 54.

These rules, however, must be consistent with the Act and reasonable. Where a consignor had delivered goods to a railway company for transmission and had the forwarding note in respect thereof duly registered and marked by the railway company, but had obtained no receipt from the railway company and the goods were lost:—Held the rules framed by the railway company under Ss. 47 & 54 whereby goods were to stand at owner's risk, and the railway company were not to be liable therefor, until a receipt had been granted by them, were inconsistent with the Act, and unreasonable and that the railway company were liable to pay compensation for the loss incurred. *Jalinsingh Kothari v. The Secretary of State for India.* 31 Cal. 951. *Ramchandra v. G. I. P. Railway* (1915) 17 Bom. L. R. 496. *Narsing Girji v. G. I. P. Ry.* 51 Ind. Cas. 309.

Scope of Sec. 54:—Sec. 54 enables the company to make provisions or conditions with regard, for example, to the receiving of goods. It is not bound to receive goods at all unless they are first weighed or unless they are properly labelled, but those provisions, namely with regard to receiving goods are antecedent to the act of delivery; in other words they provide that the company may insist on the consignor doing certain acts before he is able to deliver the goods to the company at all. Similarly with regard to forwarding, for example live stock and wild animals they can reasonably insist on their being put under proper control. With regard to the trucks for conveyance of live stock they can insist on the consignor approving of the means of transit proposed. All these matters are antecedent to the performance of the act which is legally and technically known as "*Delivery*." *Sohanlal v. E. I. Ry. Co.* (1922) 20 All. L. J. 31 p. 37.

Condition not void though not sanctioned by G. G. in council:—A condition at the back of the forwarding note to the effect that the company is not liable "for any loss of or damage to any goods whatever by reason of accidental or unavoidable delays in transit or otherwise is not void, although it had not been approved of by the G. G. in Council, and that the plaintiff was bound by the condition even if he was, in fact, ignorant of its effect. *Madras Railway Co. v. Govinda Ram.* 21 Mad. 172.

Duty of Carriers.—*Per Cockburn C. J.* "Persons holding themselves out to the world as common carriers are bound to act as such in respect to such goods as they profess to carry and have accommodation to carry, on such goods being tendered to them to be carried, and on a reasonable tender of ; . . .

without subjecting the person tendering them to any unreasonable condition," *Garlon v. B. & E. Ry.* (1861) 1 B. & S. 112; 39 L. J. Q. B. 273.

Obligation imposed upon carrier:—*Per Blackburn J.* "The obligation which the common law imposed upon the common carrier, was to accept and carry all goods delivered to him for carriage according to his profession (unless he has some reasonable excuse for not doing so), on being paid a reasonable compensation for so doing; and if the carrier refuses to accept such goods, an action lies against him for so refusing; and if the customer, in order to induce the carrier to perform his duty, paid under protest a larger sum than was reasonable, he might recover back the surplus beyond what the carrier was entitled to receive, in an action for money had and received as being money extorted from him" *G. W. Ry. v. Sutton.* (1869) L. R. 4 H. L. 226, 38 L. J. Ex. 177.

Warehouse and demurrage charges:—Where a Company gave notice that they ceased to hold the goods as common carriers, and held them as warehousemen at owner's risk, and subject to the Company's ordinary demurrage and wharfage charges, and the goods were left on their hands for about 2 years, it was held that the fact that the notice had not been dissented from, gave rise to an implied contract to pay the charges and that they were justified in selling them to defray such charges. The fact that the Railway Company sometimes insisted on and sometimes waived payment was held not to affect the case. *Ivans v. G. W. Ry. Co.* 53 J. P. 148, The receipt and acceptance of the advice note by the deft constitutes privity of contract between the plffs and the deft. *L. & Y. Ry. Co. v. Swann* (1916) 1 K. B. 263.

Demurrage whether payable pending inquiry:—The Ry. Co. is not entitled to charge demurrage for the period during which the investigation into the consignee's claim is being made, because till the company is satisfied of the *bona fides* of the claim made by him, the goods cannot be said to be ready for delivery *E. I. Ry. v. Bhagwandas* (1922) 1 Patna 15; (*B. B. & C. I. Ry. v. Jacob Elias* 18 Bom. 231 followed).

The following are reasonable excuses for refusal:—(A) That the carrier is not ready to set out on his accustomed journey. *Lane v. Cotton.* 1 Ld. Raym. 652. (B) That the goods were tendered at an unreasonable hour. *Garlon v. B. & E. Ry.* 1 B. & S. 112, 39 L. J. Q. B. 273. But if the carrier has accepted the goods for carriage, he will not afterwards be allowed to set up the unreasonableness of the hour. *Pickford v. Grand Junction Ry.* 12 M. & M. 766. (C) That he has no accommodation or convenience for carrying the goods tendered. *Garlon v. B. & E. Ry.* (*Supra*). "The duty to receive is always limited by his convenience to carry". *Mc Manus v. L. & Y. Ry.* 4 H. & N. 327; 28 L. J. Ex. 353. *Johnson v. Midland Ry.* 4 Ex. 367. 18 L. J. Ex. 366. (D) That the carriage of the goods is attended with greater danger, for instance, when at a time of public commotion, corn was the object of much fury, a carrier was held justified in his refusal to receive it for trans-

portation. *Edwards v. Sherratt* 1 East. 604. (E) It would be a reasonable excuse for not carrying goods of great value either if it appeared that the carrier did not hold himself out as a person ready to carry all sorts of goods, or that he had no convenient means of conveying with security such articles. *Jackson v. Rogers*. 2 Show 327. (F) That the goods are of a perishable or of a very fragile and delicate nature, and that he does not profess to carry such goods except under the terms of a special contract exonerating him from responsibility for deterioration incidental to the transit. *Beal v. S. D. Ry.* 5 H. & N. 875; 20 L. J. Ex. 441. (G) That the consignor is not ready to pay the full fare (including a reasonable amount for insurance of valuable property). *Wyld v. Pickford*. 8 M. & W. 443. *Show v. G. W. Ry.* (1894) 1 Q. B. 373.

55. (1) If a person fails to pay on demand made by or on behalf of a railway administration any rate, terminal or other charge due from him in respect of any animals or goods, the railway administration may detain the whole or any of the animals or goods or if, they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into its possession.

Lien for rates, terminals & other charges.

2. When any animals or goods have been detained under sub-section (1), the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days' notice of the intended auction, published in one or more of the local newspapers, or, where there are no such newspapers, in such manner as the Governor General in Council may prescribe, sufficient of such animals or goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof.

(3) Out of the proceeds of the sale the railway administration may retain a sum equal to the charge and the expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the animals or goods (if any) as remain unsold, to the person entitled thereto.

(4) If a person on whom a demand for any rate, terminal or other charge due from him has been made fails to remove from the railway within a reasonable time any animals or goods which have been detained under sub-section (1) or any animals or goods which have remained unsold after a sale under sub-section (2), the railway administration may sell the whole of them and dispose

the proceeds of the sale as nearly as may be under the provision of sub-section (3).

(5) Notwithstanding anything in the foregoing sub-section the railway administration may recover by suit any such rate, term or other charge as aforesaid or balance thereof.

Note:—With this section compare S. 97 of the Railway Clauses Act. 1 (8 & 9 Vict. C. 20) which enacts as follow:—

S. 97:—"If, on demand, any person fail to pay the tolls due in respect any carriage or goods, it shall be lawful for the company to detain and sell : carriage or all or any part of such goods, or if the same shall have been removed from the premises of the company, to detain and sell any other carriages or goods within such premises belonging to the party liable to pay such tolls and out the monies arising from such sale to retain the tolls payable as aforesaid, and charges or expenses of such detention or sale, rendering the overplus, if any the monies arising by such sale, and such of the carriages or goods as remain unsold to the person entitled thereto, or it shall be lawful for the company to recover any such tolls by action at law."

Company not justified to charge freight at wagon rate when a contract is for Maund rate:—Where a railway Co. enters into a contract to charge weight certain goods at maund rate at the dispatching station it is not justified in charging weight at wagon rate at destination. The charge so made not coming within the words "re-measurement reweighment, reclassification and recalculation". for in the condition in the consignment note. *Alla-Udin v. G. I. P. Ry.* 14 All. 1 494; (*Chunni Lal v. Nizam G. S. Ry* 29 All 228 followed.)

Railway company's right to recover undercharges:—A consignment booked at a rate alleged to have been previously declared by the sending Station Master. On destination the consignee having had to pay an undercharge according to the rate published in the Railway Tariff book, sued the Coy. for the extra freight alleging that he had been induced by the Station Master's representation to send the goods and so the Company was estopped from claiming a higher rate.

Held that there could be no misrepresentation when the rates were published in a book sold to any member of the public, and that the Coy. was, therefore, estopped from claiming the freightage subsequently recovered. *Shah Tarach Nathubhai v. B. B. & C. I. Ry. Co.* 10 K. L. R. 310-312.

As the railway receipt contained a saving clause that the railway had the right of re-classification and recalculation of rates, terminals and other charges at destination, the rates charged at the forwarding station, were not final but liable to alteration. *Nathubhai v. B. B. & C. I. Ry. Co.* 10 K. L. R. 43.

The railway company is entitled to reweigh the consignment and collect excess charge for the excess weight at the destination and to detain and sell

goods if the undercharge is not paid and credit the sale proceeds towards the undercharge and demurrage then due by the defaulter. *B. G. J. P. Railway v. Mulchand*.—A. G. Kathiawar Court. 53 of 1904.

Right reserved to correct charges.—That the Railway ^{administration} _{company} have the right of re-measurement, re-weighment, and re-calculation of charges at the place of destination, and of collecting, before the goods are delivered, any amount that may have been omitted or undercharged.—See condition 6 printed on back of consignment notes, Cir. No. 9 Railway, Government of India, P. W. D. Ry. Traffic 14th May 1895.

Right of railway to collect charges erroneously made.—The receipt is a contract between the parties, and contains the conditions on which the goods are delivered to and accepted by the railway for carriage and one of the conditions entered in the receipt being that the railway is entitled to correct the charges erroneously made in regard to the goods conveyed by them, the railway is entitled to collect the undercharge at the destination *Bean v. Sandys* 99 P. R. 1885.

Sum entered in receipt is only an estimate.—The amount of cash entered in the receipt is only an estimate and is subject to revision; *Bean v. Sandys* 99 P. R. 1885.

Company entitled to detain and sell goods if undercharge thereof not paid.—The railway company is entitled to reweigh the consignment and collect the excess charge for the excess weight at the destination and to detain and sell the goods, if the undercharge is not paid and credit the sale proceeds towards the undercharge and demurrage if then due by the defaulter. *B. G. J. P. Railway v. Mulchand*.—A. G. Kathiawar Court. App. Cas. 53 of 1905.—*Shiamlal v. E. I. Railway Co.* (1905) I. R. C. 346 & 347.

On demand.—Payment must be made on demand—*G. I. P. Ry. v. Devsey* 9 Bom. L. R. 942 at p. 948, Demand ought to be for a distinctly specified amount *Field v. Newport & Co. Ry. Co.* 3 H. & N. 409. Demand of the amount actually due for tolls is a condition precedent to the right to sell. (Ibid).

Terminals.—“*Terminal Charge* means a charge for the use of goods station and for the various duties which a railway company as common carriers, perform in connection with the goods consigned to them for carriage. *Laljiibhai v. G. I. P. Ry.* 16 Bom. 534; *Tarachand v. B. B. & C. I. Ry.* 10 K. L. R. 310; *Nathubhai v. B. B. & C. I. Ry.* 13 K. L. R. 43.

Station terminals.—A station terminal is for the use of the accommodation or staff of a terminal station after conveyance is at an end.—*M. S. & L. Ry. Co. v. Pidcock* No. 2) 10 Ry. & Can. Traff. Cas. 158. The station terminal is mainly given by way of remuneration for the accommodation a station affords in receiving and unloading goods. *Cowan v. N. B. Ry. Co.* 10 Ry. & Can. Traff. Cas. 175.

Service Terminals:—The company may charge for the services when rendered to a trader or for his convenience, a reasonable sum, by way of addition to the tonnage rate. *Per Sargent C. J.* "terminal charges were within the authority given by Act IX of 1890. Such charges, if not strictly "tolls" were certainly charges for performing of services if not "necessary" at any rate "convenient for the working of the railway" and payment for such services might also properly be regarded as a source of "profit" to the railway company, within the meaning of that Act." *Laljiibhai v. G. I. P. Ry.* 16 Bom. 534.

Other charge:—A railway company may at the end of a journey put a horse into a livery stable for his protection if the consignee or his agent is not ready to receive him at the station as an agent of necessity and the company may recover the livery charges from him. *G. N. Ry. Co. v. Swaffield* L. L. 9 Ex. 132; 45 L. J. Ex. 89.

Bailee's particular lien:—Where the bailee has, in accordance with the purpose of the bailment rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them—S. 170. I. C. Act IX of 1872.

General Lien:—This section confers on a railway administration a general lien and a right of sale, which otherwise they would not possess.

General lien-Condition in consignment note:—The vendors of the goods, an American Company, authorized their agents, on the arrival of the goods in England, to deliver the goods to a Railway Company for carriage to the buyers upon the terms of a consignment note which contained a condition that all goods delivered to the Company would be received & held by them subject to a lien for money due to them for the carriage of and other charges upon such goods and also to a *general lien for any moneys due* to them from the owners of such goods *upon any account*. The vendors' agent accordingly delivered the goods to the Railway Company for carriage to the buyers. The vendors had paid all freight & charges in respect of the carriage of the goods; while the goods were still in the possession of the Railway Company as carriers, the vendors being unpaid and having been informed that the buyers were insolvent gave notice of stoppage in transit to the Railway Company. The buyers who had, meanwhile, become owners of the goods by endorsement and delivery of the bill of lading were indebted to the Railway Company in the sum of £ 1170 on a general account. The Company claimed under the condition in the consignment note that they had a lien as against the vendors in respect of the said amount due from the buyers. Such a condition was held not to confer on the Railway Co., a right to assert a general lien on the goods in respect of the debt of the buyers in priority to the vendors' right of stoppage in transit. *United States Steel Products Co. v. G. W. Ry. Co.* (1916) 2 A. C. 189.

Company's right to detain goods for prior debts:—A Railway Company under Sec. 55 of Act IX of 1890 can detain goods for prior debts due to them by the owner. *Sham Lal v. E. I. Railway Company*. (N. W. Province-case No. 47 of 1904).

Revival of Lien by re-capture:—If the consignee carries away goods, against the will of the carrier, while they are being retained in exercise of a lien for carriage, the lien revives on the carrier retaking the goods. *Wallace v. Woodgate, Ry. and M.* 193.

Railway Company not bound to sell detained goods:—Sub sec. 2 of sec. 55 of Act IX of 1890 imposes no liability or duty upon the Railway Company to sell detained goods. It merely empowers them to do so. They therefore are not bound to sell such goods but they should inform the owner in time that his goods are detained for a debt due to the company giving full particulars. *Shiam Lal v. E. I. Ry. Co.* (Ibid).

Liability of railway for (wrongful) detention of goods when nothing is due:—A Railway Company is not justified in detaining the goods of the plff when there is no amount payable by the latter to them. Where therefore a Railway Company claiming a certain amount as undercharge on a parcel which had already been made over to the plff, detained a second parcel, and it was found that nothing was actually due;—Held that the detention was illegal and in respect thereof the position of the Company was that of a tort-feasor.

Where a Railway Company exercises the powers given to it by sec. 55 of the Railway Act illegally or wrongfully it is liable for illegal and wrongful detention and is not protected by sec. 72 of the Railway Act or sec. 161 of the Indian Contract Act. *E. I. Ry. v. Sheo Ratan Das* 11 A. L. J. 335 (1914) 14 Lawyer 355.

Time for delivery of goods:—Although a carrier may not be bound to deliver goods on any specific day or within any specific time, he is bound to deliver them within a reasonable time, and what constitutes a reasonable time must be determined upon the consideration of all the circumstances of the case *Baldeodas v. Nathoomal* 2 Agra 132. *Taylor v. G. N. Ry. Co* 35, L. J. C. P. 210. In *Raphael v. Pickford*. (5 M. & G. 288), *Tindal C. J.* Says:—"The duty to deliver within a reasonable time being merely a term ingrafted by legal application upon a promise or duty to deliver generally".

Lien by express agreement—Plaintiff consigned certain goods for carriage by the defendant's railway. The consignment note, signed by the plaintiff contained a condition that "all goods delivered to the company will be received and held by them subject to a general lien for money due to them whether for carriage of such goods or for other charges"—Held that the lien continued so long as the company held the goods and was in no way affected by the refusal of the consignee to accept the goods after they have arrived at the destination *Westfield v. G. W. Ry. Co.* 52 L. J. Q. B. 276. A contract to carry a given number of articles for a lump sum, and

any further number of similar articles, if any, at so much a head is divisible, and lien for the excess over the lump sum does not attach to the whole. *Prently v. M. G. W. Ry. Co.* 14 W. R. 314. If the carrier gives notice that all goods would be subject to a lien, not only for the freight of the particular goods but also for any general balance due from the respective owners and the goods were despatched to the order of A, a factor:—Held that the carrier had no lien against the real owner, the balance due to him from A. *Wright v. Snell* 5 B. & A. 350.

Lien for carriage of goods:—A carrier is entitled to his freight and charge and he is entitled to retain the goods in satisfaction of his lien upon them. *Baldas v. Nathoomal*; 2 Agra 132.

English cases.

A common carrier has a right to his fare for their carriage and may retain the goods until it is paid. *Skinner v. Upshaw*, 2 Ld. Raym., 752.

The right of lien exists whether the goods are the property of the consignor or some third party from whom they have been stolen or fraudulently taken. *Exon carrier's case*, 2 Ld. Raym. 867—Contra—If a thief deposits a stolen article in cloak room, a railway company have no lien for charges and no right whatever to detain the article against the rightful owner. See Disney p. 132.

A possessory lien cannot be parted with and continues so long as the possessor holds the goods. *Legg v. Evans*, M. & W. 42.

If the carrier had as against the consignee a right of general lien, it could not oust the right of the consignor to stop *in transitu* on tendering the price of carriage of the goods. *Oppenheim v. Russell* 3 Bos. & P. 43; 6 R. R. 604.

The lien is a particular and not a general lien. So that the goods may not be detained for any thing beyond the cost of their carriage, for instance, not for warehousing charges. *Somes v. British Empire Shipping Co.* 8 H. L. Cas. 33 30 L. J. Q. B. 229.

Lien not lost when:—The lien is not lost when the goods are seized by judicial process *Newhall v. Vargaz* 15 Maine 314; nor by delivery on fraudulent promise of the consignee to pay the freight. *Bigelow v. Heaton* 6 Hill (New York) 43; nor by properly warehousing the goods, even in his own name, *Gregg v. Illinois Cent R. Co.* 147 Illinois 550; *Western Trans Co. v. Barber* 56 New York 543.

No lien in the following cases:—No lien arises on account of the consignor's neglect to take the goods. *Cromwell v. N. Y. & H. R. Co.* 4 Keys (New York) 90; or where it is otherwise provided in effect by contract, as where a time is fixed for payment of the freight subsequent or without reference to delivery. *Pinn v. Wells* 10 Connecticut 103; *Chandler v. Belden* 18 Johnson (New York) 157. It cannot be acquired against the National Government. *Dusolt v. Gorman* 1 Minnesota 301. No lien can be enforced for more than the amount of the carrier's charges when agreed upon beforehand, although the goods prove to be of greater value than the

supposed. *Baldwin v. Liverpool &c. S. Co.* 74 N. Y. 125. The lien is lost by surrender of possession voluntarily or through negligence. *Norfolk S. R. Co. v. Barnes* 104 North Carolina 25; *Hale v. Barrett* 26 Illinois 195; *Boggs v. Martin* 13 B. Monroe 239; even though it is mutually agreed that the lien shall continue. *Macfarland v. Wheeler* 46 Wendell (New York) 467; and so when the carrier refuses to deliver on the ground that the goods are not in his possession, *Adams Express Co. v. Harris* 120 Indiana 73; or puts his right to hold them on some other ground. *Everett v. Coffin* 6 Wendell (New York) 603 and so, in the absence of special contract, where the goods are destroyed before the carriage is completed. *New York Cent &c. Ry. Co. v. Standard Oil Co.* 87 New York 486; *Barker v. Schooner* 1 Mackey 24; and so where by delay the consignee is injured to an amount equal to the freight. *Dyer v. Grand Trunk Ry. Co.* 42 Vermont 441; *Peebles v. Boston &c. Ry. Co.* 112 Mass 498 but not in the case of injury by inevitable accident. *Lee v. Salter* Lalor supplement (V. Y.) 163. If the carrier pays for the loss of goods, he may deduct freight. *Hammond v. McClures* 1 Bay. (So. Carolina) 101.

A carrier innocently receiving goods from a wrongdoer has no lien. *Robinson v. Baker* 5 Cushing (Mass) 137.

Where no local newspaper-mode of publishing notices:—For this see Bom. Govt. Gazette 1885, Pt. I. p. 1320,

56. (1) When any animals or goods have come into the possession of a railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him, requiring him to remove the animals or goods.

Disposal of unclaimed things on a railway.

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the railway administration may, within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods as nearly as may be under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto.

Notice of arrival of goods:—Subject to the provisions of this section, notice of arrival will be sent when practicable, but the company will accept no responsibility for non-receipt thereof.

Irregular sale of left goods whether conversion:—*Query*:—Whether failure to observe the provisions prescribed in the Railway Act with regard to sale of articles of which no delivery has been taken, would, make the sale, an act of conversion by the Railway. *Jankidas v. B. N. Ry. Co.* 16 Cal. W.N. 356.

Perishable goods—liability for conversion:—Where perishable goods are sent by a railway, the railway company are agents to carry, not to sell. To give them the right to sell, circumstances must exist, which put them in the position of agents of necessity for the owner to take that action which is necessary in the interests of the owner. Those conditions do not arise if the carrier can communicate with the owner and get his instructions. If the Railway Company can ask the owner what is to be done in the circumstances with any reasonable chance of getting an answer, they have no right to sell. They must give the owner the opportunity of deciding how he will deal with his own goods. Therefore to justify a sale by a railway company they must first show that it was commercially impossible to communicate with the owner and receive instructions from him. If they show that, they must then show that a sale was in the circumstances the only reasonable business course to take. *Springer v. Great Western Ry. Co.* (1921) 1 K. B. 257 C. A.; 40 *Mad. Law Journal* (1921) 51.

Mode of Serving notices:—See Ss. 141 & 142.

Public notice should be given before auction:—At least 15 days previous notice of each auction shall be given by advertisement in a newspaper:—See rule 21 of Warehousing and Retention of goods. (App. C.)

Rules regarding disposal of unclaimed goods:—See rules made under S. 47 (1) (1) in appendix C.

57. Where any animals, goods or sale-proceeds in the possession of a railway administration are claimed by two, or more persons, or the ticket or receipt given for the animals or goods is not forthcoming, the railway administration may withhold delivery of the animals, goods or sale-proceeds until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration against the claims of any other person with respect to the animals, goods or sale-proceeds.

Powers for railway administration to require indemnity on delivery of goods in certain cases.

What is transit:—The seller who has parted with the property in goods has a right to stop them during the time they remain in possession of a party who hold a position intermediate between him and the buyer; on the one hand he has parted with the property in and the actual possession of them; on the other hand the purchaser has acquired the property and the right to possession, but neither of them has the actual possession. The goods thus remaining in the possession of the intermediary is said to be in transit.

Right of seller to stop in transit:—"A seller who has parted with the possession of the goods, and has not received the whole price, may if the buyer becomes insolvent, stop the goods while they are in transit to the buyer".—S. 99.

Indian Contract Act, see also S. 44 & 45 of the Sale of Goods Act. 1893, (56 & 57 Vict. 1893 C. 71).

S. 44. Subject to the provisions of this Act, when the buyer of the goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

S. 45. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee or custodier for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee or custodier.

(2). If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3). If after the arrival of the goods at the appointed destination, the carrier or other bailee or custodier acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodier for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4). If the goods are rejected by the buyer, and the carrier or other bailee or custodier continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5). When the goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent to the buyer.

(6). Where the carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.

(7). Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

Insolvency.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.—S. 56 (I. Contract Act).

Stoppage in transit—The right of resuming possession arises only when the buyer becomes insolvent while the seller has not received the whole amount of his purchase money and the goods have not reached him.

Conditions under which right of stoppage may be exercised—(1) The seller must have parted with the possession of the goods. (2) He must not have received the whole price. (3) The buyer must have become an insolvent. (4) And the goods must not have come into the possession of the buyer i. e. they must be in transit.

Who can exercise the right of stoppage in transit:—The seller may exercise such a right although he might have sold the goods on credit. *Inglis v. Usherwood* 1 East 515; he is not precluded from exercising such a right where he has received conditional payment by way of Bill of Exchange or other like security even though the bills have been negotiated and are in the hands of third parties. *Finn v. Wray* 3 East 93; *Edwards v. Brewer* 6 L. J. Ex. 135; but if the intention of the parties be to give the instrument not as a conditional payment, but as an absolute security, the right of stoppage is lost. *Cowanjee v. Thompson* 3 Moore's L. A. 422. If the seller's bill is dishonoured he may exercise such a right even though he may have other goods of the buyer with him lying unaccounted for, and that the balance between the two is unadjusted and unascertained, *Wood v. Jones* 7 D. & B. 126. The fact of a purchaser being a partner in the seller's firm does not affect his right to stop the goods in transit. *Ex parte Cooper*. L. R. 11 Ch. D. 68.

Against what goods can such a right be exercised:—When the contract is divisible in its nature, the vendor can only stop those goods for which the price remains unpaid. *Merchant Banking Co. v. Phoenix B. steel Co.* 5 Ch. D. 205. It can be exercised against the goods or their sale proceeds. *Kemp v. Falk* L. R. 7 App. Cas. 573; *Ex parte Golding* L. R. 13 Ch. D. 628; *Berstein v. Strang* 37 L. J. Ch. 665; *In re Westcuthus* 3 L. J. K. B. 56; *Bajaji Sorabji v. The Clan Line Steamers Ltd.* 12 Bom. L. R. 553;

Vendor's right of stoppage not defeated:—The vendor's right to stop the goods in transit cannot be defeated by a usage of carriers to retain them as a lien for a general balance of accounts between them and their consignees. *Oppenheim v. Russell*, 3 Bos. & Pul. See also notes under S. 55.

When goods are to be deemed in transit:—Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.—S. 100 I. C. Act:—

Illustrations.

(a). B, living in Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(b). B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c). B, who lives at Poona, orders goods of A, at Bombay. A sends them to Poona by C, a carrier appointed by B. The goods arrive at Poona, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(d). B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e). B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the Master, making the cotton deliverable to A's orders or assigns. The cotton arrives at London, but before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

See also sale of Goods Act, 1893, S. 45. ante. at p. 147.

Lien will not affect the right of the consignor to stop in transitu:—

Though a common carrier may have acquired a lien as between himself and a consignee this lien will not affect the right of the consignor to stop in transitu. *Oppenheim v. Russell* 3 Bos. & P. 42, 6 R. R. 604. So a consignee cannot set up a general lien contrary to the directions of the consignor as to disposal of goods. *Firth v. Forbes* (1862) 4 Dc. G. F. & J. 409, 32 L. J. Ch. 10.

It is not necessary in order to divest the consignor's right to stop in transit, that the goods should have been taken by the very hands of the consignee himself. *Ellis & others v. Hinet & others*, 1 R. R. 743.

The transitus has been held to be at an end, where the carrier has agreed with the consignor to hold the goods in a new character either as a warehouseman to keep them, or as agent to send them to a destination not intended by the original contract, (although known by the buyer to be the ultimate destination intended by the seller). *Dixon v. Baldwin* (1804) 6 East 176; 7 R. R. 681, *Valpy v. Gibson*, (1847) 4 C. B. 837; 16 L. J. C. P. 241; *Kindal v. Marshall* (1883) 11 Q. B. D. 356; 52 L. J. Q. B. 313; 48 L. T. 951; 31 W. R. 597, and so where the goods have been transferred, under the consignee's directions to another carrier for a new destination. *Ex parte Gibbs. In re Whitworth* (1895) 1 Ch. D. 101 or where they are delivered to a warehouseman to wait the consignee's directions. *Dawson v. Wentworth*. Man & Gr. 1080.

When right to stop ceases—transitus at an end:—In *James v. Griffin* 2 M. & W. at p. 632. Baron Parke said "The delivery by the vendor of the goods sold, to a carrier of any description either expressly or by implication named by the vendee, and who is to carry on his account, is a constructive delivery to the vendee; but the vendor has a right if unpaid, and if the vendee be insolvent, to retake the goods before they are actually delivered to the vendee, or some one whom he means to be his agent to take possession of and keep the goods for him and thereby to replace the vendor in the same situation as if he had not parted with the actual possession. The actual delivery to the vendee or his agent, which puts an end to the transitus or state of passage, may be at the vendee's place which he uses as his own, though belonging to

goods, *Scott v. Pellit* 3 B. & P. 469; *Rowe v. Pickford* 8 Taunt 83; or at a place where he means the goods to remain until a fresh destination is communicated to them by orders from himself, *Dixon v. Baldwin* 5 East 175; or it may be by the vendee's taking possession by himself or agent at some point short of the original intended place of destination."

In *Bethell v. Clark* 19, Q.B.D. at p. 361. Cave J. said "In all cases of the *stoppage in transitu*, it is necessary first of all to ascertain what is the *transitus* or passage of the goods from the possession of the vendor to that of the purchaser. The moment the goods are delivered by the vendor to a carrier to be carried to the purchaser the *transitus* begins, and when the goods have arrived at their destination and have been delivered to the purchaser or his agent, or when the carrier holds them as warehousemen for the purchaser, and no longer as carrier only, the *transitus* is at an end. The destination may be fixed by the contract of sale, or by directions given by the purchaser to the vendor. But, however fixed, the goods have arrived at their destination, and the *transitus* is at an end, when they have got into the hands of some one who holds them for the purchaser or for some other purpose than that of merely carrying them to the destination fixed by the contract or by the directions given by the purchaser to the vendor. The difficulty in each case lies in applying these principles". See also *Kendall v. Marshall Stevens & Co.* L. R. 11. Q. B. D. 356; *In Re Isaac* 54 L. J. Q. B. 566; *Whithead v. Anderson* 9 M. & W. at p. 534; *Schotsmans v. Lane & York.* R. Co. L. R. 2 Ch. 332; *Ex parte Cooper* 11 Ch. D. p. 75; *Ex parte Rosewear China Clay Co.* 11 Ch. D. at p. 568; *Lyons v. Hoffnung.* L. R. 15 App. Cas. 391; *Ex parte Watson* 5 Ch. D. 35; *Ex parte Miles* 15 Q. B. D. 39.

Indian Decisions:—Indian authorities have closely followed the principle enunciated above.—See *G. I. P. Ry. Co. v. Hanmandas* 14 Bom. 57 and *Bapuji Sorabji v. The Clan Line Steamers Limited* 12 Bom. L. R. 553.

Effect of telegram to carrier not to deliver:—A, an unpaid vendor, consigned goods by Railway to B, a sub buyer at the instance of C the original buyer; during transit C became insolvent, on which A telegraphed to the Railway Company forbidding delivery to B, the telegram did not state the nature of A's claim. Held that no particular form of notice is required to effect a valid stoppage in transit under sec. 104 of I. C. Act. *Rijhumal v. Michumal* 8 Sind L. R. 65. (1914) 15 Lawyer 833; *Ex parte Falk* 13 Ch. D. 446.

Effect of part delivery:—"A delivery of part of goods in progress of the delivery of the whole has the same effect for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with the intention of severing it from the whole, does not operate as a delivery of the remainder." (S. 92 Indian Contract Act). See also S. 45 (7) of the Sale of Goods Act 1893 at p. 147.

Whether partial delivery, in progress of delivery of the whole, has the effect of a complete delivery or whether the party intended to sever the part delivered from

the rest, is a question of fact to be determined by the circumstances of each case. *Kemp v. Falk* 7 App. Cas. 586; *Bolton v. Lancashire Ry.* L. R. I. C. P. 431. In the absence of evidence to the contrary, it must, as a general rule, be assumed that the delivery of a part is intended only to operate as a delivery of that part. *Ex parte Cooper* 11 Ch. D. 68; where an order was given for several classes of goods under one contract, the delivery and acceptance of one class was held to be part acceptance of the whole. *Elliot v. Thompson* 3 M. & W. 170. Where freight was paid for the whole consignment of 181 bags, though only 73 of them had arrived at destination and were loaded into the carting agent's carts which had been engaged by the pledgee was held not to be a delivery of the whole so as to deprive the unpaid vendor of his right of stoppage in transitu for the rest of his goods. *G. I. P. Ry. Co. v. Hanmandas* 14 Bom. 57.

Payment of freight determines transit:—So long as goods are subject to a lien for freight, the transit has not ended. The goods are not at home. The converse proposition would, however, seem also to be true that when the ship-owner lands the goods under the statute, and his freight has been paid, his right of control and lien over the goods is gone and thenceforth the goods are held by statutable wharfingers for the consignee alone.—Per Justice Farran in *Liladhār v. George Wreford* 17 Bom. 62, p. 88. In *G. I. P. Ry. Co. v. Hanmandas* 14 Bom. 57, it has, however, been held that the payment of freight alone is not sufficient to put an end to the transit.

Wrongful refusal to deliver determines transit:—Where the carrier or other bailee or custodian wrongfully refuses to deliver goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.—(Sale for Goods Act 1893, S. 45 (6); See also *Bird v. Brivon* 4 Ex. 786.

“The proper inference from this provision is that, if the carrier rightfully refuses delivery, the transit is not deemed to be at an end”. (*Benjamin on Sale* 5th Ed. p. 904).

Wrongful delivery does not defeat right of stoppage:—A mistaken or otherwise wrongful delivery of goods by the carrier after notice to stop in transit does not defeat the right of the unpaid vendor, *Liladhār v. Wreford* 17 Bom. 62.

Delivery en route determines transit:—If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at appointed destination, the transit is at an end.—(Sale of goods Act. 1893 s. 45 (2), see also *Whitehead v. Anderson* 9 M. & W. 518 at p. 534; *L. & N. W. Ry. Co. v. Barlett* 7 H. & N. 400; 31 L. J. Ex. 92. Thus it appears that the transit is not at an end by the mere arrival of the goods at the appointed destination, but by delivery into the actual or constructive possession of the buyer. *Kendal v. Marshall* 11 Q. B. D. 356; 52 L. J. Q. B. 313. The vendee must therefore take actual or at least, constructive possession. So long as the carrier holds them as such and has not divested himself of his lien, the transit is not at an end. *G. I. P. Ry. Co. v. Hanmandas* 14 Bom. 57; C

shay v. Erdes 1. B. & C. 181; "The leading fact viz. the possession of the goods, is in itself ambiguous, it is necessary to gather the intention of the parties from their minor acts. If the possessor of the goods has the intention to hold them for the buyer, and not as an agent to forward, and the buyer intends the possessor so to hold them for him, the transitus is at an end; but I apprehend that both these intents must concur, and that neither can the carrier of his own will convert himself into a warehouseman so as to terminate the transitus without the agreeing mind of the buyer (*James v. Griffin* 2 M. & W. 623), nor can the buyer change the capacity in which the carrier holds possession without his assent, at least, until the carrier has no right whatsoever to retain possession against the buyer."—*Jackson v. Nichol* 5 Bing. N. C. 508; See also Blackburn on Sale p. 248.

Continuance of right of stoppage-buyer re-selling the goods in transit:—

The seller's right of stoppage does not, except in the cases hereinafter mentioned cease on the buyer's re-selling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Continuance of right of stoppage.

S. 101 (I. C. Act).

The seller's right of stoppage is not defeated by the mere re-selling of the goods by the purchaser to a third party, and that this right continues so long as delivery thereof has not been given to the second buyer or his agent. An unpaid vendor has the equitable right of insisting on marshalling the assets, that is to say of forcing the creditor to exhaust any other securities held by him towards satisfying his claim before proceeding on the goods of the unpaid vendor. *Bapuji v. Clan Line Steamers Ltd* 12 Bom. L. R. 553; *Re. Westzinthus* 5 B. & Ad. 817; *Ex parte Golding Davis & Co.* 13 Ch. D. 628; *Bellamy v. Carey* 3 Ch. 540.

When notice of stoppage in transit is given by the seller to the carrier or other bailee or custodian in possession of the goods, he must re-deliver the goods to or according to the directions of the seller. If the bailee has notice of conflicting claimants he delivers at his peril, and his only mode of protecting himself is to take an indemnity and if that be refused to interplead. *Bapuji v. The Clan Line Steamers Ltd.* (*Supra*); *Spalding v. Ruding* 12 L. J. Ch. 503.

Effect of assignment by buyer:—A broker liable upon a principal contract both to the seller and purchaser has a right to enforce the contract and entitled to sue in respect thereof. His position by virtue of his personal liability to his sellers for the price is that of an unpaid vendor with a right of stoppage in transit conferred by sec. 99 of the Contract Act, but such right would be defeated if the buyer obtained the documents of title and delivered them to a second buyer who acted in good faith and gave valuable consideration for them, as such delivery would amount to an assignment under S. 102 of the Contract Act. *Ramendra Nath Roy v. Bajendra Nath Das* 46 Cal. 831; 53 Ind. Cas. 986.

Cessation of right on assignment, by buyer of document showing title:—

The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods, assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Section 102 (I. C. Act).

Illustrations.

(a). A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b). A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

Acting in good Faith:—Knowledge that goods have not been paid for is not necessarily inconsistent with good faith in a second buyer; but knowledge of the buyer's insolvency, would indicate absence of good faith, and an assignment under such circumstances would not defeat the seller's rights. Whether forbearance or release of antecedent claims would be deemed a valuable consideration for the transfer of documents of title may be doubted (Cunningham's Contract 8th Ed. p. 269). See also *Cahn v. Pockett's &c. Steam Packet Co.* 1 Q. B. 643; *Bryans v. Nix* 4 M. & W. 775.

Valuable consideration for assignment:—"If the vendor is unpaid, one of two innocent parties must suffer by the act of a third; and it is reasonable that he who, by misplaced confidence has enabled such third person to occasion the loss, should sustain it.....Doubtless the vendor's claim cannot prevail against the claim of a transferee for value given on the faith of a negotiable security fairly and honestly taken. To the extent to which he has so given value he has a prior claim. But the rule is founded on the reason of it, as already explained. "*cessante ratione cessat ipsa lex*". Where there is no advance made or value given upon the faith of documents; where the object is simply, by a sweeping clause, to gather in whatever may be got to recoup the creditor of a debtor, who had become insolvent for an improvident advance made upon the faith of a totally different security.....it appears to their Lordships that such a transfer so made, and under such circumstances, cannot be held sufficient to defeat the vendor's claim."—Per their Lordships of the Judicial Committee in *Redger v. Comptor D'Escompte de Paris* L. R. 2 P. C. 406; 38 L. J. P. C. 30 but see *Leask v. Scott* 2 Q. B. D. 376; where it was held

that a present advance is not necessary to defeat the claim of the unpaid vendor (See also *Peacock v. Baifnath* 18 Cal. 573); and that a past consideration was held to be a good consideration, *Chartered Bank of India, Australia and China v. Henderson* 30 L. T. 578.

How seller may stop where instrument of title assigned.

Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.—Section 103. (I. C. Act).

How seller may stop where instrument of title assigned to secure specific advance.

Illustrations.

(a). A sells and consigns goods to B. of the value of 12,000 rupees. B. assigns the bill of lading for these goods to C. to secure a specific advance of 5000 rupees made to him upon the bill of lading by C. B. becomes insolvent, being indebted to C to the amount of 9600 rupees. A is not entitled to stop the goods except on payment or tender to C. of 5000 rupees.

(b). A sells and consigns goods to B. of the value of 12000 rupees. B. assigns the bill of lading for these goods to C. to secure the sum of 5000 rupees due from him to C. upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C the sum of 5000 rupees.

Railway receipts are binding and operate as stopples:—"If you give a person a document knowing he can use it in a particular way, and intending he shall use it in that particular way, by obtaining money upon it, you cannot afterwards be allowed to say, as against a person from whom he has obtained money, that the person is not to have the benefit thereof."—Per Jessel M. R. In *Merchant Banking Co. v. Phoenix Co.* L. R. 5 Ch. D. 217, The railway receipts are therefore binding and operate as estoppels either as instruments of title or otherwise and if a person make advances to another on the faith of these receipts he is entitled to recover them from the defendant company. *Jethmal v. B. B. & C. I. Ry. Co. & another*, 3 Bom. L. R. 261; see also the following cases on the point of estopples *Garr v. L. & N. W. Ry. Co.* 44 L. J. C. P. 109; *Coventry Shephard & Co. v. C. E. Ry. Co.* 11 Q. B. D. 776; *Seton L. & Co., v. Lafane* 19 Q. B. D. 68. and 23 C. W. N. 999.

Railway receipt is a mercantile document of title:—A railway receipt is a mercantile document of title to goods and according to the custom of trade, lawful possession as pledgers of a railway receipt entitles the holder of the receipt to get possession of the goods from the carriers and to retain the goods as security for the moneys advanced on pledge of the railway receipt, *Fakurappa v. Thippanna* 38 Mad. 664; (*Amarchand & Co. v. Ramdas & Chhaganlal Pitamber v. Ramdas* 38 Bom. 255 = 15 Bom. L. R. 890 = 18 Bom. L. R. 670 (P. C.); *Dolatram v. B. B. & C. I. Ry.* (1914) 38 Bom. 659 = 16 Bom. L. R. 525 followed).

Delivery of goods by railway without getting back the railway receipts:—The contract of the railway is to carry goods and to deliver them to consignee. Ordinarily it would be bound to deliver at its peril to the person entitled at the end of the transit. S. 57 protects the railway and empowers it to refuse delivery except upon the production of the railway receipt. The terms of the railway receipt show that the railway does not hold itself out as delivering goods only on production of the railway receipt. It only reserves liberty to refuse in its discretion to deliver the goods, unless the railway receipt is produced or unless, if the receipt is not produced, an indemnity is given. There is no reason for saying that the railway holds itself out to the mercantile community as never parting with the goods except upon the production of the railway receipt. The railway is not under any duty to the public or to any body else to insist upon the return of the railway receipt. It is sometimes said that that mercantile man in India treat railway receipts as documents of title and that the usage (since the decision of Privy Council in *Ramdas v. Amerchand & Co.* 40 Bom. 630) has received legal recognition. But that cannot alter the position of the Railway Company in this respect. *The Madras & Southern Mahratta Ry. Co. v. Haridoss Bannali Doss* (1918) 35 Mad L. Journal 35.

Test to be applied in determining whether a document is a document of title:—Whenever any doubt arises as to whether a particular document is a "document showing title" or a "document of title" to goods for the purposes of the Indian Contract Act (IX of 1872) the test is whether the document in question is used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive the goods thereby represented *Ramdas v. S. Amarchand & Co. & Ramdas v. Chhaganlal* (1916) 18 Bom. L. R. 670 (P. C.)

Whether Station Master competent to deliver goods on taking Indemnity Bond—whether Railway can charge demurrage pending inquiry:—Unless the railway Receipt is produced the Station Master is not competent to deliver goods on taking an Indemnity Bond under Sec. 57 of the Ry. Act. But the Ry. Adm is not entitled to charge any demurrage for the time occupied by it in making an inquiry under the section as to the identity of the person, who in its opinion is entitled to receive delivery of the goods. *E. I. Ry. v. Bhagwandas* (1921) 63 Ind. Cas. 256; 2 P. L. T. 523. (B. B. & C. I. Ry. v. Jacob 18 Bom. 231 relied on).

Expression "document showing title" &c.:—In the India Contract Act the three expressions (1) "document showing title"; (2) "document of title", and (3) "instrument of title" are used in the same sense *Ramdas v. S. Amarchand & Co.* 18 Bom. L. R. 670.

that a present advance is not necessary to defeat the claim of the unpaid vendor (See also *Peacock v. Baijnath* 18 Cal. 573); and that a past consideration was held to be a good consideration, *Chartered Bank of India, Australia and China v. Henderson* 30 L. T. 578.

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Railway receipt is a mercantile document of title.—A railway receipt is a mercantile document of title to goods and according to the custom of trade, lawful possession as pledgers of a railway receipt entitles the holder of the receipt to get possession of the goods from the carriers and to retain the goods as security for the moneys advanced on pledge of the railway receipt, *Fakurappa v. Thippanna* 38 Mad. 664; (*Amarchand & Co. v. Ramdas & Chhaganlal Pitamber v. Ramdas* 38 Bom. 255=15 Bom. L. R. 890=18 Bom. L. R. 670 (P. C.); *Dolaram v. B. B. & C. I. Ry.* (1914) 38 Bom. 659=16 Bom. L. R. 525 followed).

Delivery of goods by railway without getting back the railway receipts:—The contract of the railway is to carry goods and to deliver them to consignee. Ordinarily it would be bound to deliver at its peril to the person entitled at the end of the transit. S. 57 protects the railway and empowers it to refuse delivery except upon the production of the railway receipt. The terms of the railway receipt show that the railway does not hold itself out as delivering goods only on production of the railway receipt. It only reserves liberty to refuse in its discretion to deliver the goods, unless the railway receipt is produced or unless, if the receipt is not produced, an indemnity is given. There is no reason for saying that the railway holds itself out to the mercantile community as never parting with the goods except upon the production of the railway receipt. The railway is not under any duty to the public or to any body else to insist upon the return of the railway receipt. It is sometimes said that that mercantile man in India treat railway receipts as documents of title and that the usage (since the decision of Privy Council in *Ramdas v. Amarchand & Co.* 40 Bom. 630) has received legal recognition. But that cannot alter the position of the Railway Company in this respect. *The Madras & Southern Mahratta Ry. Co. v. Haridoss Bannalal Doss* (1918) 35 Mad L. Journal 35.

Test to be applied in determining whether a document is a document of title:—Whenever any doubt arises as to whether a particular document is a "document showing title" or a "document of title" to goods for the purposes of the Indian Contract Act (IX of 1872) the test is whether the document in question is used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive the goods thereby represented *Ramdas v. S. Amarchand & Co. & Ramdas v. Chhaganlal* (1916) 18 Bom. L. R. 670 (P. C.)

Whether Station Master competent to deliver goods on taking Indemnity Bond—whether Railway can charge demurrage pending inquiry:—Unless the railway Receipt is produced the Station Master is not competent to deliver goods on taking an Indemnity Bond under Sec. 57 of the Ry. Act. But the Ry. Adm. is not entitled to charge any demurrage for the time occupied by it in making an inquiry under the section as to the identity of the person, who in its opinion is entitled to receive delivery of the goods. *E. I. Ry. v. Bhagwandas* (1921) 63 Ind. Cas. 256, 2 P. L. T. 523. (B. B. & C. I. Ry. v. Jacob 18 Bom. 231 relied on).

Expression "document showing title" &c.:—In the India Contract Act the three expressions (1) "document showing title"; (2) "document of title", and (3) "instrument of title" are used in the same sense *Ramdas v. S. Amarchand & Co.* 18 Bom. L. R. 670.

Mercantile document of title:—The expression "Mercantile document of title to goods" includes a bill of lading, dock-warrant, warehouse-keeper's certificate, Railway-receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented. S. 137 (Expl.) Transfer of Prop. Act.

Mate's receipt is not a document of title:—Mate's receipt, though is a simple ordinary receipt for goods, is not negotiable instrument within the meaning of S. 137 of The Transfer of Property Act nor is a document of title and the goods do not pass upon the transfer of it. *Natchiappa Chetty v. The Inland Flotilla Co.* 41 Cal. 670=16 Bom. L. R. 278; 9 Ind. cas. 465.

Right of consignee on formal delivery:—Where the consignee presented a railway receipt for certain stolen goods to the station master, paid the freight and received formal delivery of the package from the latter. By such a delivery the goods had come to be not merely in the potential possession of the consignee but actually within his power and unrestricted control, though he had not removed them, from the station where they were then lying, nor made any attempt to do so and that he had received them within S. 411 of I. P. Code. *Shivdhar sutal v Emp.* 40 Cal. 990.

Whether delivery order confers a title:—By the English Common Law a delivery order is regarded as a mere token of authority to deliver; and before the wharfinger has attorned, it does not, independently of statute or custom, enable the purchaser to confer a title upon a vendee or a sub-vendee free from the vendor's lien for the price.

The Indian Contract Act gives no larger effect, except by S. 108, to a delivery order than it had by English Common Law, and under that Act (S. 90 iii (c) and Ss. 95 and 98), the giving of a delivery order by a vendor to a vendee does not of itself give the vendee such a possession of the goods as to defeat the vendor's lien. The exception to this rule contained in exception (1) to S. 108, which provides that a seller may give to a buyer a better title than he had himself where he is, by the consent of the owner, in possession of the goods or documents relating thereto, cannot be held to apply to cases where the possession is entirely beyond the control of the owner. *Le Geyt v. Harvey* 8 Bom. 501; *Farina v. Home* 16 M. & W. 119; *Mc Ewan v. Smith* 2 H. L. Cas. 309. A delivery order by endorsement is no more than a token of authority to receive possession *G. I. P. v. Hanmandas*. Ry. Rulings 358.

Effect of assignment of railway receipts:—S. 103 of the Indian Contract Act read in conjunction with S. 137 of The Transfer of Property Act (as provided for by S. 4 of The Transfer of Property Act) go to show that railway receipts are mercantile documents of title fulfilling one or other of the conditions specified

in the explanation to S. 137 of The Transfer of Property Act, viz:—proving in the ordinary course of business the possession or control of goods or authorising or purporting to authorise either by endorsement or by delivery the possessor of the document to transfer or receive the goods thereby represented and that under the 3rd condition of the railway receipt in question, it was clear that the document fell under the latter class. *Amarchand & Co. v. Ramdas and Chhaganlal Pitamber v. Ramdas* 38 Bom. 255=15 Bom. L. R. 890. *Fakurappa v. Thippanna* 38 Mad. 664; (*G. I. P. Ry. v. Hanmandas* 14 Bom. 57 dist). The endorsee of the receipt has, therefore, sufficient interest in the goods covered by it to see the railway company for their loss. *Dolatram v. B. B. & C. I. Ry* 38 Bom. 659=16 Bom. L. R. 525.

Made specifically upon it.—The words of S. 103 “an advance made upon it” plainly required that the pledge of a bill of lading, in order to defeat the right of stoppage *in transitu*, should be as security for a new advance, and not as security for a pre-existing debt; that the section further required the advance for which the bills of lading were pledged to be “made *specifically* upon it,” and after stating that “the construction of this section was by no means free from doubt” decided that “the requirements of the section would be complied with where it is shown that any sum is advanced on the terms that it is to be secured by the particular bill of lading or the goods represented by it, though it may be secured by other bills or goods also, and although the bill of lading may have been intended to be security not only for the particular sum or sums advanced upon it, but also for some other antecedent liability.” *Dijnath v. Graham* 11 Cal. 740 at p. 742; See also *Roger v. The Comptoir d'Escompte de Paris* L. R. 2 P. C. 393.

Stoppage how effected.

The seller may effect stoppage in transit, either by taking actual possession of the goods or by giving notice of his claim to the carriers or other depositary in whose possession they are.—Section 104.

Stoppage how effected.

Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.—Section 105.

Notice of seller's claim.

Notice of claim to the carrier, how made effective.—“To make a notice effective as a stoppage *in transitu* it must be given to the person who has the immediate custody of goods; or if given to the principal, whose servant has the custody, it must be given, as it was in the case of *Litt v. Coruley* (7 Taunt 168) at such a time and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent the delivery to consignee.”—*Whitehead v. Anderson* 11 L. J. Ex. 157; 9 M. & W. 518; *Lilad*

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Notice of claim to the carrier, how made effective:—“To make a notice effective as a stoppage *in transitu* it must be given to the person who has the immediate custody of goods; or if given to the principal, whose servant has the custody, it must be given, as it was in the case of *Litt v. Cowley* (7 Taunt 168) at such a time and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent the delivery consigned.”—*Whitehead v. Anderson* 11 L. J. Ex. 157; 9 M. & W. 218; 1;

Wroford 17 Bom. 62; *Kemp v. Falk* L. R. 7 App. Cas. 573. A notice addressed to the consignee, is presumably insufficient to effect a stoppage, *Phelps v. Corbett* 29 Ch. D. 813.

No particular form of notice necessary to effect stoppage:—A, an unpaid vendor consigned goods by railway to B a sub-buyer at the instance of C the original buyer. During transit C became insolvent, on which A telegraphed to the Railway Co., forbidding delivery to B, the telegram not stating the nature of A's claim. Held that no particular form of notice is required to effect a valid stoppage in transit under S. 104 of Ind. Con Act, *Rijhumal v. Michumal* 8 Sind L. R. 65; (1914) 15 Lawt 833; *Ex parte Falk*, 14 Ch. D. 446.

Right of seller on stoppage.

Right of seller on stoppage.

Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.—Section 106.

Illustration.

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

Resale on buyer's failure to perform.

Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice, to the buyer of his intention to do so, re-sell them, after the lapse of a reasonable time, and the buyer must bear any loss, but it is not entitled to any profit which may occur on such re-sale.—Section 107.

Bailee not responsible, on re-delivery to bailor without title:—See Sec. 166, I. C. Act.

Right of third persons claiming goods bailed:—See Sec. 167, I. C. Act.

Liability for failure to comply with notice:—If an unpaid vendor gives notice to the Railway Administration, not to give the goods to the consignee and if the company, notwithstanding such a notice, deliver the goods to him and the vendor loses his money, the company are bound to make good the loss to him in an action founded on tort and not on contract; *Pentifex v. Mid. Ry. Co.* 3 Q. B. D. 23.

What are charges:—The charges include a right to wharfage, freight and demurrage by a carrier. *B. E. & C. I. Ry. Co. v. Sassoon* 18 Bom. 231, they will also include dock rent & charges. *Attenborough v. St. Katherine's Dock Co.* 3 C.P.D. 450.

Interpleader suit when to be filed:—When notice of stoppage in transit is given by the seller to the carrier or other bailee or custodian in possession of the goods, he must re-deliver the goods to or according to the directions of the seller. If the bailee has notice of conflicting claimants he delivers at his peril, and his only mode of protecting himself is to take an indemnity and if that be refused to interplead. *Bapuji v. The Clan Line Steamers Ltd.* 12 Bom. L. R. 553; *The Tigress* (1865) Br. & L. 38; 32 L. J. Adm. 97.

One S, who resided at Hissar, in the Punjab, consigned 600 bags of rapeseed to K. K. in Bombay and delivered them to the plffs. for carriage to Bombay; while the goods were in transit S. ordered, the plffs. to deliver the goods to his agent K., instead of to the consignee, and R. demanded delivery of the goods; before the goods could be delivered, the defendants Messrs E. D. Sassoon & Co., claimed them alleging that they had been assigned to them for valuable consideration; the plaintiff thereupon filed the suit and it was held that the suit was properly instituted by the plffs. as an interpleader suit so as to entitle them to their costs * * * *B. B. & C. I. Ry. Co. v. Sasson*, 18 Bom. 231; See also *Tirupati Raju v. Vissam Raju* 20 Mad. 155. Such a suit may be instituted when two or more persons claim *bona fide*. See also *Mason v. Hamilton* 5 Sim. 19 (where the bill filed stated that the plff. had no interest in the goods except his lien for wharfage and warehouse rent, was held to be a plain case of interpleader).

Railway Company not an agent of consignor:—A Railway Company can file an interpleader suit against the consignor and a third party claiming adversely to the consignor, as the company is not an agent of the consignor within the meaning of O. XXXV rule 5 of the Code of Civil Procedure 1908. *Chhaganlal v. B. B. & C. I. Ry.* (1915) 17 Bom. L. R. 339.

58. (1) The owner or person having charge of any goods which are brought upon a railway for the purpose of being carried thereon, and the consignee of any goods which have been carried on a railway shall, on the request of any railway servant appointed in this behalf by the railway administration, deliver to such servant an account in writing signed by such owner or person, or by such consignee, as the case may be, and containing such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge in respect thereof.

Requisitions for
written account of
description of
goods.

(2) If such owner, person or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods in order that their description may be ascertained the railway administration may, (a) in respect of goods which

been brought for the purpose of being carried on the railway, refuse to carry the goods unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods or, (b) in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate.

(3) If an account delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, and which have been carried on the railway, the railway administration may charge in respect of the carriage of the goods a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

(4) If any difference arises between a railway servant and the owner or person having charge, or the consignee, of any goods which have been brought to be carried or have been carried on a railway, respecting the description of goods of which an account has been delivered under this section, the railway servant may detain and examine the goods.

(5) If it appears from the examination that the description of the goods is different from that stated in an account delivered under sub-section (1), the person who delivered the account, or, if that person is not the owner of the goods, then that person and the owner jointly and severally, shall be liable to pay to the railway administration the cost of the detention and examination of the goods, and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

(6) If it appears that the description of the goods is not different from that stated in an account delivered under sub-section (1), the railway administration shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid.

Compare the provisions of this section with those of Ss. 98 and 101 of The Railway Clauses Act 1845 (8 and 9 Vic. C. 20).

Scope of the section :—This section is limited to the case of a demand being made by any railway servant appointed in this behalf by the railway administration. It only on such demand being made that the owner or person in care of the goods is required to deliver an exact account of their quantity and description under his

signature. So where no such demand is ever made, the conviction under S. 29 of Act IV of 1879 (S. 106 of the present Act of 1890) cannot be supported. *Harya v. Emp.* 36 P. R. 1885 (Cr).

Misdescription of goods:—It is the duty of every person sending goods by a carrier to make use of no fraud or artifice to deceive him, whereby his risk is increased or his care and diligence may be lessened.—See *Angel on Carriers 5th Ed.* p. 252; See also *Edwards v. Sheratt* 1 East 694; *Batson v. Donovan* 4 B. A. 21.

If the consignor fraudulently conceals the value and risk from the carriers, in order to be charged at a lower rate for carriage, he cannot recover more than the amount of the declared value. If he declares the value of the goods, he is bound by the declaration and cannot afterwards show that the value of the goods exceeded than that declared. *McCance v. L. & N. W. Ry. Co.* 31 L. J. Ex. 65; *Kenrig v. Eggleston Aletyn* 93; *Walker v. Jakson* 10 M. & W. 161; *Gibbon v. Paynton*; 4 Burr. 2299; *Nevin v. G. S. & W. Ry. Co.* 30 L. R. Ir. 125; *Ishwardas v. G. I. P. Ry. Co.* 3 Bom. 120; *Rohemullah v. Palmer Cor.* 133; *Barr Moosing & Co. v. L. & N. W. Ry. Co.* (1905) 2 K. B. 113.

Mis-statement must be wilful:—A railway administration is entitled to demand a declaration of contents. Such a declaration, though it is the basis of the contract, is not a part of the contract; and an innocent mis-statement of a material fact does not in itself avoid the contract. In order to do so, the mis-statement must be *wilful and fraudulent*. *Leban v. General Steam Navigation Co.* L.R. 8, C. P. 88.

Refusal to give correct account:—Any person who is the owner or has the care of goods sent by railway must on demand give a correct account in writing signed by him of the nature and quantity of the goods. Any such person who gives a false account, or *refuses to give such account on demand*, is liable to a penalty (Railway Clauses Act, 1845; Ss. 88 & 89). *Mousell Brothers Ltd v. London & N. W. Ry. Co.* (1917) 2 K. B. 836; Company held liable for false account by manager. *London & N. W. Ry. Co. v. Rickerby Ltd.* (1920) W. N. 338.

Giving false account of weight of goods is an offence.—If a consignor makes to the Railway Co. any false statement with regard to the goods to be carried including a false account as to the weight of the goods, in order to avoid the payment of any tolls payable in respect thereof, commits an offence. *London & N. W. Ry. Co. v. Rickerby* (1921) 1 K. B. 231.

Penalty for giving false account of goods—See S. 106.

Exoneration from responsibility in case of goods falsely described—See S. 78.

59. (1) No person shall be entitled to take with him, or to require a railway administration to carry any dangerous or offensive goods upon a railway.

(2) No person shall take any such goods with him upon a railway without giving notice of their nature to the station-master or other railway servant in charge of the place where he brings the goods upon the railway, or shall tender or deliver any such goods for carriage upon a railway without distinctly marking their nature on the outside of the package containing them or otherwise giving notice in writing of their nature to the railway servant to whom he tenders or delivers them.

(3) Any railway servant may refuse to receive such goods for carriage and, when such goods have been so received without such notice as is mentioned in [sub-section (2)] having to his knowledge been given, may refuse to carry them or may stop their transit.

(4) If any railway servant has reason to believe any such goods to be contained in a package with respect to the contents whereof such notice as is mentioned in sub-section (2) has not to his knowledge been given, he may cause the package to be opened for the purpose of ascertaining its contents.

(5) Nothing in this section shall be construed to derogate from the Indian Explosives Act, 1884, or any rule under that Act, and nothing in sub-sections (1), (3) and (4) shall be construed to apply to any goods tendered or delivered for carriage by order or on behalf of the Government or to any goods which an officer, soldier, sailor or police-officer or a person enrolled as a volunteer under the Indian Volunteers Act, 1869, may take with him upon a railway in the course of his employment or duty as such.

Dangerous goods:—The goods declared to be dangerous are given in the G. R. R. Part I Ch. III r. 14 For rules see app. A.

Under the Indian Explosives Act IV of 1884 S. 4 the word "Explosive" means gun-powder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyro-technic effect; and (b) fog-signals, fire-works, fuzes, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

Liquid metal polish having a flash point of over 73 F.:—Such a metal polish in securely closed tins is "dangerous goods" within the meaning of P.

IV-of the Schedule to the Railway Rates and Charges Orders. *N E. Railway Co. v. Reckitt & Sons Ltd.* 109 L. T. 327. Se. "ferro-silicon" which is always liable to be dangerous by giving off poisonous gases has been held as dangerous goods. *Bamfield, Goolk & Sheffield Transport Co.* (1910) 2 K. B. 95.

Carrier not bound to carry dangerous goods:—Carrier is entitled to refuse to receive the merchandise if he has reasonable grounds for believing that the contents of the parcel are dangerous (*Farrant v. Barnes* 11 C. B. N. S. 553) or that the reception and forwarding of the chattels may constitute a breach of a regulation under a statutory enactment. *William v. G. W. Ry. Company* 52 L. J. 250.

Fire works:—It would be difficult to say that fire-works are not dangerous goods within the meaning of this section *E. I. Ry. v. Kalidas* 26 Cal. 465.

Offensive goods:—The following goods shall be deemed to be offensive goods for the purpose of the Indian Railways Act, 1890, namely.

(1) Blood dried, (2) corpses, (2) carcasses of dead animals, (4) Bones, (5) Municipal or street sweepings or refuse, (6) Manures of any kind except chemical manures, (7) rags, other than oily rags, (8) any decayed animal or vegetable matter. G. R. R. Part II. R. 15.

Duty of railway servants:—It is not the duty of the railway servants to search every parcel that passes the ticket barrier carried by a passenger, *E. I. Ry. v. Kalidas* 28 Cal. 401 = 5 C. W. N. 449.

Guilty knowledge must be proved:—A guilty knowledge is necessary to support a conviction under S. 107. *Hearne v. Garton* 28 L. J. M. C. 215; negligence alleged against the railway company must be proved affirmatively where denied *E. I. Ry. v. Kalidas* 28 Cal. 401.

Persons sending dangerous goods by railway liable to third persons for consequences:—A person who sends an article of a dangerous and explosive nature to a railway company, to be carried by such company without notifying to the servants of the company the dangerous nature of the article is liable to third parties for the consequences of an explosion, whether it occurs in a manner which he could not have foreseen as probable or not. *Lyell v. Ganga Das* 1 All 60; *Farrant v. Barnes* 31 L. J. C. P. 137; *Nitro-glycerine case* (1872) 15 Wallace 524; *Kamrudin v. Emp.* 2 P. R. 1905; *Forgrove steam & Navigation Co. Ltd. v. G. W. Ry. Co.* 15 Cal. W. N. page cx. (1910) 2 K. B.

Liability of consignors of dangerous goods:—Persons consigning goods of a dangerous character are bound to communicate to the carrier the facts within their knowledge which indicated the dangerous character of the goods. *Brass v. Maitland* 6 E. & B. 470;—*Farrant v. Barnes* 11 C. B. (N. S.) 553; and in cases where the carrier has neither knowledge nor means of knowledge of such dangerous character and is under a duty to accept the goods for carriage, a warrant that no special damage is involved in the carriage of them may be implied

the request & the consequent obligation to carry. *Bamfield v. Goolle & Sheffield Transport Company Limited* (1910) 2 K. B. 193 C. A. (in which it was held that where a consignor does not give notice to a carrier that the goods are dangerous he must, unless the carrier knows or ought to know the dangerous character of the goods, be taken impliedly to warrant that the goods are not dangerous, though the consignor himself may not be aware of their dangerous nature.

Penalty:—for unlawfully sending dangerous goods &c. see S. 107.

60. At every station at which a railway administration quotes a rate to any other station for the carriage of traffic other than passengers and their luggage, the railway servant appointed by the administration to quote the rate shall, at the request of any person, show to him at all reasonable times, and without payment of any fee, the rate books or other documents in which the rate is authorized by the administration or administrations concerned.

Exhibition to the public of authority for quoted rates.

The section is adapted from S. 14 of The Regulation of Railways Act, 1873 (36 & 37 Vict. C. 48) and S. 33 of the Railway and Canal Traffic Act. 1888 (51 and 52 Vict. C. 25).

Through and Local rates must be shown:—The rate book which a railway administration under this section is bound to keep at every station must show at the request of any person all rates, local as well as through, which are to be charged from the station where such book is kept. *Oxide v. N. E. Ry. Co.* 3 Ry. and Can. Traff. Cas. 35; but they are not bound to show how the through rates quoted by it are divided between the companies receiving them. *Watkinson & others v. Wrexham &c. Ry. Co.* (No. 3) 3 Ry. & Ca. Traff. Cas. 446; *Cairns v. N. E. Ry. Co. & Coxon v. N. E. Ry. Co.* 4 Ry. & Can. Traff. Cas. 221.

Fare lists to be exhibited:—The Station Master must see that both the English and Vernacular sheet time-tables and fare-lists are correctly exhibited at all stations where traffic is booked.

That the Indian Railways Act IX of 1890, and Goods and Coaching Tariffs are available for inspection by the public.—G. R. R. Part I Ch. XV r. 255 (c) & (d).

Penalty for breach of the above rule:—If any railway servant commits a breach of rule 255 shall be liable to a fine which may extend to 50 Rs.—G. R. R. Part I r. 359.

Station:—"Station means any place on a line of railway at which traffic is booked and dealt with, or at which an authority to proceed is given under the system of working—G. R. R. Part I. r. 1 (30) See also *Harborne Ry. Co. v. L. & N. W. Ry. Co.* (No. 2.) 2 Ry. & Can. Traff. Cas. 169.

61. (1) Where any charge is made by and paid to a railway administration in respect of the carriage of goods over its railway, the administration shall, on the application of the person by whom or on whose behalf the charge has been paid, render to the applicant an account showing how much of the charge comes under each of the following heads, namely;—

Requisitions on railway administrations for details of gross charges

- (a) the carriage of the goods on the railway.
- (b) terminals;
- (c) demurrage; and
- (d) collection, delivery and other expenses;

but without particularizing the several items of which the charge under each head consists.

(2) The application under sub-section (1) must be in writing and be made to the railway administration within one month after the date of the payment of the charge by or on behalf of the applicant, and the account must be rendered by the administration within two months after the receipt of the application.

Sub-clause 1 is adapted from S. 17 of the Regulation of the Railways Act, 1868 (31 & 32 Vict. C. 119) and 1 (d) from S. 14 of the Regulation of Railways Act, 1873 (36 & 37 Vict. C. 48).

Terminals:—"Terminal charge" means a charge for the use of good station and for the various duties which a railway company, as common carriers, perform in connection with the goods consigned to them for carriage. *Lahibhai Shamji v. G. I. P. Ry.* 16 Bom. 434, 15 Bom 537. See also at p. 11.

Demurrage:—Demurrage may be charged on all vehicles ordered and not loaded or loaded and not made available for despatch after the expiry of 9 hours of day light from the time at which they are placed in position for the purpose.

(b) Demurrage may be charged on all loaded vehicles requiring to be discharged by owners which are not discharged after the expiry of 9 hours of day-light from the time of being placed in position for unloading.

Demurrage charges:—Are those that are levied for warehousing goods which are not taken delivery of within the prescribed time and which the defendant company is bound to warehouse as involuntary agent of the consignee. *Surajmal v. E. I. Ry. Co.* 16 Cal. W. N. 359.

(c) **Wharfage:—**A wharfage charge may be levied in respect of all goods not removed from railway premises before closing time of the day following that on which they are made available for delivery.—*See rules for Warehousing & retention of goods* Appendix C.

Carriage of Passengers.

62. The Governor General in Council may require any railway Administration to provide and maintain in proper order, in any train worked by it which carries passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as the Governor General in Council has approved.

Communication between passengers & railway servants in charge of trains

This section is adapted from S. 22 of the Regulation of Railways Act, 1868. (31 & 32 Vict. 119). The said section 22 enacts as follows:—

“ Every Railway Company must provide, and maintain in good working order in every train worked by it which carries passengers, and travels more than 20 miles without stopping, such efficient means of communication between the passengers and the servants of the company in charge of the train as the Board of Trade may require. * * * *

any passenger who makes use of the said means of communication without reasonable and sufficient cause is liable for each offence to a penalty not exceeding £5 *Jones v. Bithell & anr* (1919) 1 K. B. 219; *Girjashanker v. B. B. & C. I. Ry. Co.* 20 Bom. L. R. 126; *Ishwandas v. King. Emp.* (1922) (1 L. R.) 1 Patna 260

Means of communication between the passengers and the railway servants in charge of the train:—From the wording of the section it appears that the railway company is under no obligation statutory or otherwise to provide any such means of communication unless the Governor General in Council may so require; On the same principle, see *Henry Conder v. Ballaprasad* 1895, P. J. p. 91.

(2). No passenger train or mixed train shall be despatched from any station, unless it be provided with means by which a guard can communicate with, or get access to, every passenger carriage in the train G. R. R. part 1. r. 64.

Precautions required by statute:—The omission by the Company to take any precautions, which they are directed by statute to take would, it seems, in all cases be evidence of negligence as against a person who can be shown to belong to the class for whose benefit the precautions were intended, and who is injured by the neglect of the company to take the precautions. Thus if the company are required to provide means of communication in passenger trains, between the passengers and the servants of the Company, the failure to provide such communication would be evidence of negligence in an action by a passenger injured thereby. *Elmires v. L. & Y. Ry. Co.* L. R. 8 Ex. 283; but a neglect of a statutory duty imposed in favour of a particular class of persons is not in itself evidence of negligence as against a person not a member of that class who suffers an injury by reason of that neglect. Thus the neglect of the duty to fence, imposed on the Company in

favour of adjoining landowners, is not evidence of negligence in an action by a passenger. *Buxton v. N. E. Ry. Co.* L. R. 3 Q. B. 549.

Absence of onstomary precautions-negligence:—Where the Company take greater precautions than are required of them, the fact that on a particular occasion they omit the precaution, is not evidence of negligence. *Skelton v. L. & N. W. Ry. Co.* L. R. 2 C. P. 631 p. 636; *Cliff v. Mid. Ry. Co.* L. R. 5 Q. B. 258; but the case would be different if the absence or presence of the additional precaution has come to be received as a signal of the absence or presence of danger. *Skelton v. L. & N. W. Ry. Co.* (Supra)

Penalty—for failure to comply with the requisition see S. 94.

Penalty—for interfering with any means of communication as mentioned in this section without any reasonable or sufficient cause see sec. 108.

63. Every railway administration shall fix, subject to the approval of the Governor General in Council, the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment, in English or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more of such vernacular languages as the Governor General in Council, after consultation with the railway administration, may determine.

Maximum number of passengers for each compartment.

Effect of the Section:—The effect of secs. 63, 93 & 109 of the Act is to confer a right upon the occupants of a compartment in a train to resist the entry of passengers in excess of the number for which the compartment is intended, and, in order to enforce the right, a passenger is entitled to invoke the aid of the railway officers at any station or of the officer in charge of the train when it is in motion or in a station *Ishwardas v. King Emp.* (1922) (I. L. R.) 1 Patna 260

Meaning of compartment:—A compartment means a division of a railway carriage, separated from the other divisions by partitions upto the roof of the carriage, each such division being completely screened off from its adjoining division. *In Re Dadabhai* 24 Bom. 293, = 1 Bom. L. R. 688.

Overcrowding.—It is the duty of a railway company not to allow a passenger carriage to be over-crowded, and they are liable to pay damages in respect of injury which is the natural result of such over-crowding. *Met. Ry. Co. v. Jackson*, 47 L. J. Q. B. 303; *Ishwardas v. King Emp.* (Supra)

The Company are bound to take reasonable steps to regulate a crowd, which they have caused to assemble at a station and are liable to an action for .

at the suit of a passenger injured through the default of this duty. *Hogan v. S. E. Ry. Co.* 28 L. T. 271.

They must also take reasonable measures to protect passengers from disorder likely to arise on their premises in consequence of their mode of conducting business. *Murphy v. G. N. Ry. Co., of Ireland* (1897) 2 I. R. 301; *MacGregor v. Glasgow Subway Co.* (1901) 3 Sc. Sess. Cas. 1131.

Penalty—for neglect of provisions of this section—see S. 93; for compelling passengers to enter carriages already full—see S. 102; for entering a compartment already full or resisting entry into a compartment not full—see S. 109.

64. (1) On and after the first day of January, 1891, every railway administration shall, in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train.

Reservation of compartments for females

(2) One such compartment so reserved shall, if the train is to run for a distance exceeding fifty miles, be provided with a closet.

Meaning of compartment:—See S. 63 *Supra*.

Penalty—for a male person entering into a carriage or other place reserved for females—see S. 119.

65. Every railway administration shall cause to be posted in a conspicuous and accessible place at every station on its railway, in English and in a vernacular language in common use in the territory where the station is situate, a copy of the time-tables for the time being in force on the railway, and lists of the fares chargeable for travelling from the station where the lists are posted to every place for which card tickets are ordinarily issued to passengers at that station.

Exhibition of time tables and tables of fares at stations.

This section is adapted from S. 15 of the Regulation of Railways Act, 1863 (31 & 32 Vict. C. 119).

Publication of time-tables:—On the publication of time-tables, a company promises that a train shall run as advertised. *Denton v. G. N. Ry. Co.* 25 L. J. Q. B. 129

Exhibition of time-tables and fare lists:—See Sec. 60 at p. 164.

66. (1) Every person desirous of travelling on a railway shall, upon payment of his fare, be supplied with a ticket, specifying the class of carriage for which, and the place from and the place to which, the fare has been paid, and the amount of the fare.

Supply of tickets on payment of fares.

(2) The matters required by sub-section (1) to be specified on a ticket shall be set forth—

- (a) if the class of carriage to be specified thereon is the lowest class, then in a vernacular language in common use in the territory traversed by the railway, and
- (b) if the class of carriage to be so specified is any other than the lowest class, then in English.

Fare:—Means the amount fixed for taking a passenger from one station to another. 4. P. L. R. 548. *Warton Law Lexicon* defines:—"fare" as the money paid for a passenger either by land or water, *In Stroud's Judicial Dictionary* "his fare" in 8, Vic. Chap. 20, sec. 103 is defined as "the fare by the train and for the class of carriage in which the passenger travels". *Webster's dictionary* defines 'fare' as "the price of passage or going" the sum paid or due for conveying a person by land or water.

Upon payment of his fare:—Means upon payment of his fare to the Railway Co. and that therefore a person who had purchased a workman's ticket marked "not transferable" which had been issued by a railway Co. to another person, from that person and had travelled on the railway without having purchased a ticket from the railway Co., had travelled on the railway "without having previously paid his fare, and with intent to avoid payment thereof within the meaning of the statute *Reynolds v. Beasley*. (1919) 1 K. B. 215.

Passenger carriers are bound to carry passengers whenever they offer themselves and are ready to pay for their transportation—Story on Bailments, 9th Ed. S. 591; Angell on Carriers 5th Ed. S. 525; In *Jencks v. Coleman* 2 Summers R. 221 Story J., said: "There is no doubt this steamboat is a common carrier of passengers for hire, and therefore the defendant, as commander, was bound to take the plaintiff as a passenger on board, if he had suitable accommodation, and there was no reasonable objection to the character or conduct of the plaintiff."

"The common law right of a traveller to be conveyed by the carrier of passengers on his readiness and willingness to pay the usual fare, is subject to the condition that he offers himself as a passenger at a reasonable time and place. *Partab Daji v. B. E. & C. I. Ry. Co.* 1 Bom. 52. *Aston v. Heaven* 2 Esp. 583; *Christie v. Griggs* 2 Camp 79; *Sharpe v. Gray* 9 Bing. 457 are authorities to show that a person who conveys passengers only is not a common carrier.

Contract by ticket:—No one has a right to occupy a seat in a public vehicle e. g. a Railway carriage with a dog, even if a ticket has been bought for it and another passenger is entitled to regard such a seat as empty (1911) 78 J. P. (Journal) 447.

Supplied with a ticket:—Tickets are deemed to be issued, subject to the condition of there being room available in the train for which they are issued, and if there is not room available in the train for which the ticket was issued, shall on returning the ticket within 3 hours after the departure of the train be entitled to have his fare at once refunded; he is also entitled to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he is obliged to travel on account of there being no room available in the class of carriage for which he has paid—S. 67 (1, 2 & 3).

Issue of ticket during journey:—A passenger by train has no right, on the arrival of the train at an intermediate station, either to require the Station Master to leave the platform where he has special duties connected with the train, and return to his office for the purpose of procuring him a ticket or to require the distribution of tickets to be resumed on his behalf, which has already been closed for the public outside the station—*Partab Daji v. B. B. & C. I. Ry. Co* 1 Bom. 52.

Who is a passenger:—A Passenger is one who undertakes, with the consent of the carrier, to travel in the conveyance provided by the latter otherwise than in the service of the carrier as such (Shearman and Redfield's "Law of negligence" Sec. 488).

When liability arises:—From the decided cases, it is quite clear, that contract need not be the basis of a claim for compensation for injury, but that the mere acceptance of a person for conveyance by a railway company gives him, in the absence of fraud on his part, the position and rights of a passenger, and entails on the company so accepting him responsibility for his safety so far as reasonable care and caution can ensure it. The fact of a person having been in too great a hurry to take a ticket before starting or travelling beyond the place to which his ticket applied, will not, in the absence of fraudulent intent, divest the company of that responsibility. Allowing a person to enter the train without first producing his ticket; the existence of a custom for payment of fares to be permitted on arrival at the end of the journey; or any evidence of genuine mistake on the part of the passenger as to the destination of the train in which he was travelling, would no doubt be sufficient to distinguish him from a mere trespasser. The question in such cases would always be, Was there any fraud on the part of the injured person? If so, he cannot make the company liable for negligence; If not, they will be so liable. *Foulkes v. Metropolitan D. R. Co.* 49 L. J. Q. B. 361; *Marshall v. N. & B. Ry. Co.* 11 C. B. 662. (See Parsons on liability of Railway Cos. p. 40). Hence a railway company is liable, for personal injuries caused to a person travelling with a free pass—*G. N. Ry. Co. v. Harrison* 10 Ex. 376; 23 L. J. Ex. 308; *The Stella* (1900) 69 L. J. C. P. 70; because he is as much a passenger as if he were paying full fare. *Indiana v. Klentschy* 167 Ind. 598; 10 Cal. L. J. 55n (1909); to a post-office servant travelling with the Mails. *Collett v. L. & N. W. Ry. Co.* 20 L. J. Q. B. 411; and to a child carried by its mother with her free in accordance with the provisions of the company's rules. *Austin v. G. W. Ry. Co.* L. R. 2 Q. B. 412.

Action founded on Tort, not on contract.—An action by a passenger against a railway for personal injuries caused by the negligence of the company's servants is founded on tort and not on contract (1) even though the passenger has taken a ticket, *Shiam Narain v. B. B. & C. I. Ry.* 41 All 488; *E. I. Ry. v. Kulidas* 28 Cal. 40 *Taylor v. M. S. & L. Ry. Co.* (1895) 1 Q. B. 134; 64 L. J. Q. B. 6; *Collett v. L. & N. W. Ry. Co.* 20 L. J. Q. B. 411; (2) or though the negligence charged is an act of omission and not of misfeasance. *Kelly v. Metro Ry. Co.* (1895) 1 Q. B. 944; 64 L. J. Q. B. 598; see also *Meux v. G. E. Ry. Co.* (1895) 2 Q. B. 387; and *Marshall v. York, New castle Berwick Ry. Co.* 11 C. B. 655; 21 L. J. C. P. 34.

There is no general obligation upon a railway company to carry passengers, who have taken tickets "Safely" "*Shiam Narain v. B. B. & C. I. Ry.* 41 All 488, 17 A. L. J. 506 (*Austin v. G. W. Ry. Co.* (1867) L. R. 2 Q. B. 442, and *E. I. Ry. v. Kulidas* 28 Cal. 401 referred to).

(b) **Liability for tort committed by railway servants.**—A servant of a railway company has no implied authority to do an act which the Company itself has no power to do. *Poulton v. London & S. W. Ry. Co.* L. R. 2. Q. B. 534; *Goff v. Great Northern Ry.* 3. E. & E. 672; *Ormiston v. G. W. Ry. Co.* (1917) 1 K. B. 598.

Where a police sergeant, under instructions from a Station Master, assaulted the plaintiff in removing him from a compartment of the train which had been reserved for Europeans and the plaintiff sued the Secretary of State for damages, on the ground that the reservation was wrongful and that he had a right to travel in the compartment from which he was ejected;—Held, that a suit for a tort by a railway servant will not lie against him. *Mathuradas v. The Secretary of State for India* 5 S. L. R. 141.

The plaintiff was the holder of a first class season ticket between certain stations upon the defendant's railway. Upon the plaintiff's arrival at a station at which the ticket was available, after he had passed the ticket barrier and had shown his ticket to a ticket collector but before he had reached the exit from the station, a porter of the debt took him by the arm and in the presence of other persons, charged him with having travelled in first class with a third class ticket. In an action against the debts for arrest it was held that as the debts had no power to arrest the plaintiff for the offence with which the porter charged him they could not be taken to have impliedly authorised the porter to arrest him and that the action must be dismissed. *Ormiston v. G. W. Ry.* (1917), 1 K. B. 598.

There is no common Law right to inflict blows on a man with fists if he refuses to move. *Mahomed Hussain v. A. W. Farby & others* 25 Cal. L. J. 610.

Master having control of servant liable for his tortious Acts.—It is well established law that a master in whose general service a man is, is not "responsible" for the tortious act of the man if the contract of the

has been, for the time being displaced by the power of the control of another master into whose temporary service the man has passed by being lent or sub-contracted. In such a case it is the "*Patron momentané*" and not the *Patron habituel* who is responsible *Bain v. Ventral Vermont Ry. Co.* (1921) 2 A. C. 412 (*Donovan v. Laing syndicate* (1893) 1 Q. B. 629 Followed.)

The master is liable when the servant acting in a matter which is within the scope of his authority, that is, within the course of his employment, commits a wrong by exceeding the authority vested in him. The act itself which constitutes the wrong may be, and usually is in excess of the servant's authority, but if in thus transgressing his authority, the servant is doing in the master's interests one of the class of acts which the master has employed him to do, then the master is liable. *Girjashanker v. D. B. & C. I. Ry.* (1917) 20 Bom. L. R. 126.

Nature of liability.

Who are common carriers of passengers:—A person who exercises the public employment of carrying passengers is a common carrier of passengers and is bound to receive all passengers who accept his terms. *Clarke v. Westham Corporation* (1909) 2 K. B. 858, C. A. pp. 877, 881: see also *Baker v. Ellison* (1914) 2 K. B. 762; (corporation with statutory authority to run motor omnibuses held by reason of notices exhibited thereon, not to be common carriers of passengers, on the top of their omnibuses in regard to certain portions of the route).

Nature of liability of Railway Companies and other carriers for negligence in the conveyance of passengers.—Railway Companies as carriers of passengers are not insurers, but are bound to exercise the greatest care and forethought for securing the safety of their passengers, and are answerable for the smallest negligence on the part of their servants and agents; but not for unforeseen accidents which care and vigilance could not have provided against or prevented.

A Railway Co. does not warrant that everything they necessarily use in the conveyance of passengers is absolutely free from defects likely to cause peril, and therefore they will not be responsible to a passenger for a defect in the carriage which is such that it could neither be guarded against in the process of construction nor discovered by subsequent examination. (See Macnamara's Law of Carriers on land 2nd Ed. s. 360). *Perin v. G. I. P. Railway* (Sept. 1903) Bom. H. Ct. *E. I. Ry. Co. v. Kalidas Mukerjee* 28 Cal. 401; 28 I. A. 141. *Aston v. Heron* 2 Esp. 553; *Christie v. Greggs* 2 Camp. 79; *Jackson v. Tolett* 2 Stark 37; *Dudley v. Smith* 1 Camp. 167. Their duty also extends to taking reasonable care that such passengers shall not be exposed to danger during the journey. If through the want of due care, the passenger is killed or injured, the carrier is liable to make compensation and may even be made criminally responsible.—Per Blackburn J. in *McCawley v. Furness Ry. Co.* 42 L. J. Q. B. 4; L. R. 8, Q. B. 57; but they will not be held liable for unforeseen accidents which care and vigilance could not have provided against or prevented. (See Supra).

Carrier's liability:—The liability of a common carrier for injury to its passengers by its servants while on duty has been differently interpreted by the English and American Courts. Both write in the doctrine that the carrier is liable to the same extent that an individual would be for an injury done by its servant in the course of his employment. *Allen v. London & S. W. R. R. Co.* L. R. 6. Q. B. 65; *Bayly v. Manchester &c. R. R. Co.* L. R. 8 C. P. 148; and equally whether the act is wilful or merely negligent. *Ramsden v. B. & A. R. R. Co.* 104 Massachusetts 117.

A common carrier is therefore, bound to protect its passengers from violence from whatever source arising so far as can be secured by such reasonable precautions as human judgment and foresight are capable of. *Goddard v. Grand Trunk Railway* 57 Maine 202-213; the carrier is bound absolutely to protect its passengers against violence from its own servants while engaged in performing a duty which the carrier owes to its passengers. *Bryant v. Rich* 106 Massachusetts 880. The duty which the carrier owes to the passengers as such begins the moment the passenger becomes such and lasts until he ceases to be a passenger. *Snow v. Fitchbury R. R. Co.* 136 Massachusetts 552. The liability of a carrier is not limited to acts of physical violence done to passengers by its employees. It extends to oral insults as well. *Gillespie v. Brooklyn Heights R. R. Co.*, 178 New York 347.

To summarize:—The real criterion of liability in all actions against a carrier for injury inflicted by its servants beyond the scope of their employment whether malfeasance, misfeasance, or non-feasance is this:—Was the person injured a passenger? If not, he cannot recover. If so, he can recover, provided that the wrong doing servant was on duty at the time the wrong was committed, *Farwell v. B. & W. R. R.* 4 Met. 49, 58. *Goddard v. Grand Trunk Ry.* (supra). See also at p. 171.

Railway company bound to carry passengers inside the carriage:—A railway company contracts to carry passengers inside and not outside their carriages. A passenger, who puts any part of his person outside the carriage of a railway company in which he is travelling and receives an injury to the part so extended, is guilty not only of negligence by putting himself outside the carriage but of contributory negligence which disentitles him to recover against the company, provided that, no matter what negligence the company has been guilty of, that could not have caused the passenger any injury so long as he remained inside the carriage. *Dullabhji v. G. I. P. Ry. Co.* and *Anna v. G. I. P. Ry. Co.* 34 Bom. 427. 12 Bom. L. R. 73 & 100; *Todd v. Old Colony &c. Railroad Co.* 89 Mass 207; *Pirie v. Caledonian Ry Co.* (1890) 17 sc. sess cas. 1157. (Contra *New Jersey Railroad Co v. Kennard* 20 Pa St. 283). The above dicta cannot be followed as rigid and inflexible rules of law. *Jehangir v. B. B. & C. I. Ry. Co* 37 Bom 575=15 Bom. L. R 252, See also *Beven on Negligence* p. 988.

Company not liable for acts of those over whom they have no control:—In *Pounder v. N. E. Ry. Co.* (1892) 61 L. J. Q. B. 136 the question as regards the duty of a railway company to its passengers and its liability for the

acts of other passengers was raised and considered. In this case the plaintiff had been employed in the eviction of pitmen from their houses and had thus incurred their ill will. When he took a ticket the company's servants had no knowledge that he was exposed to greater danger than an ordinary travelling passenger; but in the hearing of some of the defendant's servants, he was threatened by several pitmen with assault; being afraid of violence he got into the guard's van for safety, but from there he was removed and placed into a third class compartment by the defendant's servants who knew at the time that he had been engaged in their evictions and feared violence from them. Before the train started some pitmen entered the very compartment in which he, the plaintiff was, and thereby greatly overcrowded it. The plaintiff complained of this, but the defendant's servants did nothing towards getting them out or give the plaintiff a seat in another carriage. The plaintiff was assaulted and injured by them during the journey. At the next station, they got out, and other pitmen entered that compartment and repeated the assault upon him. Such mischief happened at each station at which the train stopped and at each station he complained of this to the guard but without any result—Held that the company were not liable. *Smith J.* said "What is the duty of a railway company to its passengers? It arises out of the contract and must be determined upon the facts known to the contracting parties at the time of the contract." "There is no duty in these circumstances to take extraordinary care of a passenger by reason of any unknown peculiarity then attaching of him." See also *Daniel v. Metro. Ry. Co.* L. R. 5 H. L. 45; but under the analogous facts the contrary has been held in America. There the Company was held liable to the plaintiff—See *New Orleans St. Louis & Chicago R. Co. v. Burke* 21 Am. Rep. 689; *Fain v. Ventrol Vermont Ry. Co.* (1921) 2 A. C. 412.

A, a passenger while travelling on the defendant's company's line was assaulted by a drunken man at the station, at which the train had stopped. He was seen drunk outside the station, but the ticket collector who allowed him to come on the platform, had no knowledge that he was drunk, nor was there anything in his conduct to attract any attention. Held by the Court of Appeal that to hold the Company liable would be to place the duty of the defendants at too high a standard. *Adderley v. G. N. Ry. Co of Ireland* (1905) 2 Ir. R. 378.

Liability of railway companies towards persons coming to see passengers off:—In *Watkin's case*, Denman, J. while delivering the judgment said—"I am of opinion that a railway company, keeping open a bridge over their line for the use of their passengers, is bound to keep that bridge reasonably safe and that if in practice, the friends of passengers are allowed by the company's servants to see passengers off by the trains, and to cross the bridge without asking special permission, the duty of the company in that respect, cannot be put lower towards them than towards those whom they accompany for such not unreasonable purpose. I think that this view is consistent with the cases of *Corley v. Hill* (27 L. J. C. P. 318; 4 C. B. B. S. 556) and *Smith v. London &c. Docks. Co.* (L. R. 3 C. P. 330; 37 L. J. C. P. 217). I regard the passenger's friend so permitted to go along the

bridge by constant acquiescence on the part of the railway, as not being in the nature of a person barely licensed to be *there*, but as being invited to go to the same extent as the passenger whom he accompanies, and who is there on lawful business, in which the passenger and the company have both an interest. I consider also that the case of *Indermaur v. Dames* (L. R. 2 C. P. 311; 36 L. J. C. P. 181) is in favour of the view." *Watkins v. G. W. Ry. Co.* 46 L. J. C. P. 817.

In the same way the Railway Company are liable for negligence to persons who come to their stations on business. *Holmes v. N. E. Ry. Co.* 24 L. T. 69.

A Railway Company is liable to all persons lawfully on any part of the premises for any injury caused by negligence on the part of the Co., or its servants. *Tough v. North British Railway Co.* (1914) S. C. 291.

Right of railway to exclude persons from platforms—Suit for refund of money paid to secure admission to platform not maintainable:—Under Rule 19 of the rules for the guidance of the public and railway officials, the railway administration has the right to exclude from station platforms any person not having business on the railway premises.

The desire of a person to see his friend off does not constitute *business* within the terms of rule 19 published in the Supplement to the Gazette of India 1884 especially where his presence is unnecessary so far as his friend's departure is concerned and his friend does not require any assistance from him.

The existence of rule 19 justifies the exclusion from a platform of persons without platform tickets even if it be held that the station platform is not private property. The right to exclude which the railway company possesses, under the above rule obviously entails the right to admit on certain conditions including the condition for payment for admission, and no suit is maintainable for refund of money paid for such admission. *E. I. Ry. Co. v. Moti Sagar* 46 P. R. (1911) 126, 6 P. W. R. 251 = 12 Lawyer 781; 9 Ind. Cas. 1011.

Rule to exclude persons from platform is not repugnant.—The right of excluding persons from platforms who have no business there is not repugnant to the provisions of this section (66) or sec. 68. *E. I. Ry. Co. v. Moti Sagar* (supra.)

Liability for injury to trespassers:—If a man goes on to the back steps of the hind-most coach or a train in order to get a gratuitous ride, having received no permission or license so to do from the railway officials, though to their knowledge, he had done the same thing on other occasions, the company is not liable, if the man gets injured, for, the Company owed him no duty. *Grand Trunk Ry. Co. v. Barnett* 130 L. T. 526, 12 Lawer p. III p. 11; (1911) A. C. 361 See also *Hardy v. Central London Ry. Co.* (1920) 3 K. B. 459.

Liability to Licensees:—The Company are under a duty to take reasonable care for the security of persons to whom an inducement or invitation is offered to come upon the premises of the company for the advantage of the Co.

The principle would extend to an intending traveller. (*Lancaster Canal Coy. v. Parnaby* 11 A. & B. 223; *Chapman v. Bothwell* 27 L. J. Q. B. 315); a workman who goes to perform a contract with the Company. *Indermur v. Davis* L. R. 2 C. P. 311. *Elliott v. Hail* 15 Q. B. D. 315. Consignees assisting the servants of the Company, in unloading their own goods with the consent of the Company. *Wright v. L. & N. W. Ry. Coy.* 44 L. J. Q. B. 119.

Duty of Licensee.—A person going upon the premises of the Company by invitation is bound to take reasonable precautions against the danger which is obvious, or of which he has notice. He cannot recover for an injury caused by a passing train to a horse which he has taken out of its harness. *French v. Mill Plymouth Co.* (1908) 24 T. L. R. 611.

Invitees.—The term "invitee" is applied to persons (other than mere volunteers, or bare licensees, guests, servants or persons whose employment is of such a kind that danger may be taken to have actually bargained for) who go on to premises upon business which concerns the occupier and upon his invitation, either express or implied.

Invitee-Licensee.—An invitee differs from a bare licensee in that the latter has merely permission to be on the premises and is not there by invitation or on lawful business of interest to both parties. *Belch v. Smith* 7 H. & N. 736; *Jenkins v. G. W. Railway* (1912) 1 K. B. 525 C. A. A distinction must be drawn between cases of mere tacit acquiescence in persons coming upon premises without leave and cases where there is some encouragement or inducement which amounts to permission to use the premises. *Binks v. South Yorkshire Ry & River Dun Co.* 3 B. & S. 244.

Where a police constable seeing the door of deft's warehouse open after dark and in order to see if anything was wrong entered the warehouse in the execution of his duty and injured himself by falling into an unfenced sawpit inside the warehouse. As the police constable had no legal right to enter the warehouse he was neither an invitee nor a licensee and even assuming that he had a right, the deft was under no duty to him to make the place safe for him or to warn him of the danger, the deft was held not liable for damages to the plaintiff. *Great Central Ry. Co. v. Bates* (1921) 3 K. B. 578.

A trespasser has no rights of a passenger.—Thus the plaintiff, a shop girl over eighteen years of age was travelling upon a special ticket which was sold only to students under eighteen years of age at a reduced rate and which she had obtained by falsely representing herself to be a student entitled to it. She was injured in a collision due to defendants' negligence. Recovery of damages was denied, since the only relation between the plaintiff and the defendant was induced by her fraud and she cannot be allowed to set up that relation against the defendant as basis of recovery. *Fitzmaurice v. New York, New Haven & Hartford Ry.* 192. Massachusetts 159-161 *Way v. Chicago Rock Island & Pacific Ry.* 64 Iowa 48.

The decision would apply to a person who travels upon a free pass fraudulently procured. *Toledo & C. Ry. v. Brooks* 81 *Illinois* 245; *Reynolds v. Beasley* (1919) 1. K. B. 215.

Standard of care:—As to the standard of care required in the case of a carrier of passengers, it is sufficient that the carrier should adopt the best known apparatus, kept in perfect order and worked without negligence by the servants he employs. If he does that, he ought not to be responsible for the consequences of an extremely rare and obscure accident which cannot, in a business sense, be prevented by any known means. *New Berry v. Bristol Tramways & Carriage Co., Ltd.* (1912) 107 L. T. 801 C. A. at p. 803. *Jones v. G. N. Ry. Co.* (1918) 34 T. L. R. 466.

Does not warrant absolute safety:—The Railway Company does not warrant the absolute safety of its passengers. Their undertaking as to them goes no farther than this, that as far as human care and foresight can go, they will provide for their safety. They are bound to keep the railway itself in good travelling order and fit for use and to provide roadworthy engines and carriages, skilful drivers and engineers and all things necessary for the safe conveyance of such passengers and in some cases to provide means of communication between the passengers and the guard. *Readhead v. Mid. Ry. Co.* 4 Q. B. 379; *Wright v. Mid. Ry. Co.* 42 L. J. Ex. 89; *Ford v. L. & S. W. Ry. Co.* 1 F. & F. 730; *Sorabji Balliwala v. Jamsedji wadia* 15 Bom. L. R. 959; *E. I. Ry. v. Kalidus* 28 Cal. 401.

They do not warrant that every thing they use for the carriage of passengers shall in all respects be perfect i.e., absolutely free from defects likely to cause peril, and therefore they are not liable for a latent defect in the tyre of a wheel which is such that it could neither be guarded against during construction nor discovered by subsequent examination. *Readhead v. Midland Ry. Co.* 4 Q. B. 379; 38 L. J. Q. B. 169; See also *Richardson v. G. E. Ry. Co.* 1 C. P. D. 342. (a case of alleged negligence in allowing an unsound truck to travel on the line without due examination).

Reasonable care:—How "Reasonable care" is to be measured formed the subject of judicial consideration in *Pounder v. N. E. Ry. Co.* L. R. 13 Q. B. p. 385 where Justice Mathew observed:—The railway company are bound to take reasonable care for the safety of their passengers. The controversy is as to how that reasonable care was to be measured, and I am clearly of opinion that it can only be ascertained by reference to the ordinary incidents of a railway journey and by reference to what must be taken to have been in the contemplation of the parties when the contract of carriage was entered into.

No warranty that other railways using the line will not be guilty of negligence:—Railway Companies contract that all means of carrying and the persons connected with it shall use due care (including in that term the use of

skill and foresight) and diligence, but they do not contract that other railway companies who may be entitled under some right to use the line shall not be guilty of negligence in the management of their trains. *Wright v. Mid Ry. Co.* L. R. 8 Ex. 137; 42 L. J. Ex. 89.

A railway company having running powers over another company's line is liable to passengers for injury from collision, though it was owing to the negligence of the servants of the other company *Thomas v. Rhymney Railway* 40 L. J. Q. B. 89; L. R. 6 Q. B. 266

Special Contract-limited liability-passenger travelling at his own risk-contract extends to risk incurred during whole journey:—A railway company by contracting with a passenger that he shall travel "at his own risk" limit their liability except for negligence. Thus in *McCarty v. Furness Ry. Co.* L. R. 8 Q. B. 57, *Cockburn L. C. J.* while delivering the judgment said "The plaintiff had a free pass, and was carried under an agreement, in which it was provided that he should travel at his own risk, and I think that such an agreement must have been intended to exclude everything to which the company would ordinarily be liable as carriers of passengers. Now, I cannot think of anything for which the company would be liable with regard to the plaintiff, *except negligence*. There would, under ordinary circumstances, be an obligation to use due care in carrying the plaintiff. This obligation is excluded by the express terms of the bargain, and consequently there is a good defence to the action." See also *Harris v. Perry & Co.* as to the liability of a gratuitous carrier of passengers (1903) 2 K. B. 219 C. A.

Per Blackburn J.—An agreement that the passenger should be carried at his own risk would not take away the carrier's liability to a criminal prosecution. No such agreement could be set up as a defence to an indictment but there is nothing to prevent it from being pleaded in a civil action. In *Dallabhi v. G. I. P. Ry. Co.* 12 Bom. L. R. 73 at p. 100 Justice Beaman remarked that a passenger must travel inside and not outside his compartment, and therefore if he does travel outside, he does so entirely *at his own risk* and the company cannot be held liable for any injury which he suffers in consequence. see *Hall v. N. E. Ry. Co.* L. R. 10 Q. B. 437; 44 L. J. Q. B. 164 (wherein it was held that the ticket under which the plaintiff travelled meant that he should be at his own risk during the whole of the journey). *Duff v. G. N. Ry. Co.* 4 L. R. Ir. C. L. 178. (In this case there was a condition on the back of the invoice under which the driver travelled. The condition was as follows:—"That, as a driver is allowed to attend the cattle during transit, they will allow such driver to travel free of charge, upon condition that he so travels at his own risk". In an action by the driver to recover damages for the personal injuries suffered by him, the above condition on the invoice was held binding and therefore his suit was dismissed. See also *Gallin v. L. & N. W. Ry. Co.* L. R. 10 Q. B. 212; 44 L. J. Q. B. 89; (where it was held that the exemption from liability on the part of the company extends, not only to the actual transit, but also to risks incurred on the premises of the company in coming to and going from the points to

which the contract to carry applies). *The Stella* (1900) 69 L. J. C. P. 70; *Johnson v. G. S. & W. Ry. Co.* 9 Ir. R. C. L. 108; But if such a contract is made with an infant, it will not be held valid and binding. *Hower v. L. & N. W. Ry. Co.* (1894) 2 Q. B. 65; 63 L. J. Q. B. 547.

Whether a railway company may free itself from liability by contract.—If a passenger has entered a train on a mere invitation or permission from a railway company without more, and he receives an injury in an accident caused by the negligence of its servants, the company is liable for damages for a breach of a general duty to exercise care. Such a breach can be regarded as one either of an implied contract, or of a duty imposed by the general law, and in the latter case as in form a tort. But in either view this general duty may be superseded by a specific contract, which may either enlarge, diminish or exclude it. If the law authorises it, such a contract cannot be pronounced to be unreasonable by a court of justice. The specific contract, with its incidents either expressed or attached by law, becomes in such a case the only measure of the duties and the plaintiff cannot by any device of form get more than the contract allows him.

If the contract is one which deprives the passenger of the benefit of a duty of care which he is *prima facie* entitled to expect that the company has accepted, the latter must discharge the burden of proving that the passenger assented to the special terms imposed. This may be shown to have been done either in person or through the agency of another. Such agency will be held to have been established when he is shewn to have authorised antecedently or by way of ratification the making of the contract under circumstances in which he must be taken to have left everything to his agent. In such a case it is sufficient to prove that he has been content to accept the risk of allowing terms to be made without taking the trouble to learn what was being agreed to.

The company may infer his intention from the conduct. If he stands by under such circumstances that it will naturally conclude that he has left the negotiation to the person who is acting for him, and intends that the latter should arrange the terms on which he is to be conveyed, he will be precluded by so doing from afterwards alleging want of authority to make any such terms as the law allows. Moreover, if the person acting on his behalf has himself not taken the trouble to read the terms of the contract proposed by the company in the ticket or pass offered, and yet knew that there was something written or printed on it which might contain conditions, it is not the company that will suffer by the agent's want of care. The agent will, in the absence of something mis-stated by the company, be bound and his principal will be bound through him. Otherwise, would be to depart from the general principles of negligence in other business transactions, and to render it impracticable for railway companies, to make arrangements for travellers and consignors, and to cause inconvenience to those who deal with them.

The only right to be carried will be one which arises under the terms of the contract itself and these terms must be accepted in their entirety. The company owes the passenger no duty which the contract is expressed on the face of it to exclude, and if he has approbated that contract by travelling under it, he cannot afterwards reprobate it by claiming a right inconsistent with it. *Grand Trunk Ry. Co. of Canada v. Robinson* L. R. (1915) 1 App. Cas. 740 = 19 Cal. W. N. 903 (P. C.)

Robbery duo to over-crowding-Railway not liable:—Robbery committed from the person of a passenger travelling in an over-crowded railway is not of itself such a natural and probable consequence of the over-crowding as to make the company liable to the passenger, even, if the over-crowding was caused by the negligence of the company's servants. The station master is not bound in such a case to stop the train until the man charged with the robbery can be searched. *Pounder v. N. E. Ry.* (1892) 1 Q. B. 328; 61 L. J. Q. B. 136; *Cobb v. G. W. Ry. Co.* 62 L. J. Q. B. 335; (1893) 1 Q. B. 459.

Negligence.

(a) **Happening of accident-injury to passenger-evidence of negligence—**when an accident happens to a passenger on a railway, either by the carriage breaking down or running off the line, that is a *prima facie* evidence of negligence on the part of the company. Such evidence, if not rebutted, will justify a verdict against the company. *Dawson v. M. S. & L. Ry. Co.* 5 L. T. 682.

A passenger receiving injury in an accident occasioned by a train running in the dark against another train standing at a station is *prima facie* evidence of negligence. *Skinner v. L. B. & S. C. Ry. Co.* 5 Ex. 787; 15 Jur. 299; and the fact of the accident was sufficient evidence to cast upon the company the burden of showing that there was no negligence on their part. *Flannery v. Waterford & Limerick Ry. Ir. R.* 11 C. L. 30; *Rogers v. Rhymney Ry.* 26 L. T. 879.

A passenger injured on a railway proves *prima facie* case of negligence against the company by showing that the train and the railway were exclusively under their management. *Curpue v. L. B. & S. C. Ry.* 5 L. B. 747.

A Passenger train proceeding from one station to another three hundred yards distant, at which permanent buffers were erected, jolted and so injured the plaintiff. The train stopped after the jolt and near the buffers:—Held there was evidence of negligence. *Burke v. M. S. & L. Ry.* 22 L. T. 442.

A collision between two trains of the same railway company is *prima facie* evidence of negligence. *Skinner v. L. B. & S. C. Ry. Co.* 5 Ex. 787.

If the door of a carriage of a railway company is open, it is evidence of negligence on the part of the company, but not conclusive proof of it. *Dullabhji v. G. I. P. Ry. Co. & Anna. v. G. I. P. Ry. Co.* 12 Bom. L. R. 73. But when an open door of a moving train strikes and injures a passenger standing on a station platform is *prima facie* evidence of negligence. *Toal v. North British Ry. Co.* (1908) A. C. 382.

To run a train at 40 to 45 miles an hour through an incorporated town where the presence of persons on the line may be anticipated is a negligence. *Ashbury Smith's Administrator v. Cincinnati & New Orleans & Texas Pacific Ry. Co.* 41 L. R. A. 193; (1916) *Contemporary Law Review* p. 341.

It is no negligence to have upon the road a machine which would not move unless some one intentionally interfered with it. *Ruoff v. Long & Co.* (1915) 32 T. L. R. 82; (1916) 18 Bom. L. R. 20. *Hardy v. Central. L. Ry. Co.* (1920) 2 K. B. 459.

Where sufficient time is not allowed at a station for passengers to alight and the train is set in motion whilst they are alighting, there is evidence of negligence on the part of the Company. *Gemmell v. G. & S. Railway Co.* 18 S. C. L. R. 627.

Where engines blow off steam with great noise at a level crossing over a highway, there is evidence of negligence. *Manchester Junc. & Altrincham Railway Co. v. Fullarton* 14 C. B. N. S. 54.

The fact that the catch of a gate which the company is bound to maintain is out of repair is evidence of negligence if an animal gets on to the line and is injured. *Brooks v. L. & N. W. Ry. Co.* 33 W. R. 167.

(b) **Train running off the line:**—A train was run over a rail known to have been defective and fractured was held to be evidence of negligence. *Pym v. G. N. Ry. Co.* 2 F. & F. 619. Assuming it is *prima facie* evidence of negligence on the part of a railway company that a train has got off the line, such evidence is entirely rebutted by proof that the accident arose from the wilful and wrongful act of a stranger. *Latch v. Rimmer Ry.* 27 L. J. Ex. 155.

(c) **Injury owing to defective waggons:**—Railway companies although bound to use the utmost care, skill and vigilance in everything that concerns the safety of passengers do not warrant the roadworthiness of the carriages they use and consequently are not responsible for an accident to a passenger arising from a latent defect in the wheel of one of their carriages, such as no skill or care could detect. *Readhead. Mid Ry. Co.* 9 B. & S. 579; 38 L. J. Q. B. 169; *Mausser v. Eastern Counties Ry.* 3 L. T. 585.

It is the duty of a railway company to see that the trucks are in a state to travel safely; but a minute examination of such trucks cannot be required nor does it become the duty of the company to make a minute examination of the whole of a truck merely because a defect has been discovered in it. *Richardson v. G. E. Ry. Co.* 1 C. P. D. 342; 35 E. T. 351. *Cal Ry Co. v. Mulholland* (1898) 67 L. J. P. C. 1. The company was held not liable for negligence to a person injured by such an accident. *Gilbert v. N. L. Ry.* 1 Cab and E. 31, a company is also not liable for injury caused by a defect to a truck belonging to it while the truck is being used by another company. *Caledonian Railway Co. v. Mulholland.* (See Supra). Nor is it the duty of a company minutely to examine "foreign trucks" brought upon its railway, *Richardson v. G. E. Railway* 35 L. T. 351.

The contract between a restauraunt keeper and his customer contains an implied warranty by the restauraunt keeper that the premises shall be as safe as

reasonable care and skill can make them, but he is not liable for defects which could not have been discovered by the exercise of reasonable care and skill on the part of anyone concerned. *Brannigen v. Harrington* (1921) 37 T. L. R. 342.

Latent defect—Injury caused by the falling of an electric fan:—The deft would not be held liable if the falling of the fan is not due to any negligence on their part, but is due to an accident owing to a latent defect in the metal of the suspension rod, and that the accident could not have been averted by the exercise of ordinary care, skill and caution on the part of the defts.

The burden of proof in an action for damages for negligence rests on the plaintiff where the injury complained of is caused by the use of tackle or machinery for which the deft is responsible. *Cates v. Mengini Bros* 19 Bom. L. R. 779; *Macfarlane v. Thompson* 22 Sc. L. R. 179.

Prima facie evidence of negligence:—An engine driver of the defendant Co., engaged in shunting operation not knowing that certain trucks were on a siding went too fast and drove the last of the trucks into an engine, whereby a shunter who was on the line was crushed to death. Held, there was evidence of negligence rendering the defendant company liable to compensate the widow of the shunter. *Grant v. G. W. Ry. Co.* 14 T. L. R. 174 C. A. So also a machine constructed of steel one inch thick weighing 18 cwt., delivered to carrier for conveyance and found cracked in carrier's yard. Held, prima facie evidence of negligence *United Machine Tool Co. v. G. W. Railway Co.* (1914). 30 T. L. R. 312.

Presumption of negligence:—Where collisions occurred between trains belonging to the same railway Co., on the same line of rails, (*Carpue v. L. & Brighton Ry.* 5 Q. B. 747); where one of the trains belong to a company, having running powers over the line of the other company, the latter being considered to have control of both trains. *Ayles v. South Eastern Railway Co.* L. R. 3 Exch. 146). Where a railway embankment which gave way owing to its being badly constructed. (*G. W. Ry. of Canada v. Braid* 1 Moo. P. C. C. (N.S.) 101); and running a train over a rail known to be defective have been held to be matters so much within the defendant's control as to raise the presumption of negligence. (*Pym v. G. N. Railway* 2 F. & F. 619).

Negligence at Station:—The plaintiff was injured by a fall of a portman's tau from truck laden with luggage and driven by a porter. Held, that as the negligence was an act of misfeasance by a servant of the defendant company in the course of his employment, the maxim of *Respondent Superior* applied and that the defendants were liable. *Tebutt v. Bristol & Exeter Ry. Co.* 40 L. J. Q. B. 78.

M, was a clock-room clerk in the defendants' employ; he used to take up parcels for passengers from the cloak-room to the train as part of his duty. A passenger had asked him to take a parcel to the train which he did, and as he was running back, he ran against another porter, who in his turn came against the ticket-collector, and

the ticket-collector up-set the plaintiff's wife, causing injuries which resulted in her death; Held, that the defendants were liable since at the time of accident M. was acting within the scope of his employment. *Milner v. G. N. Ry. Co.* 50 L. T. 367.

Notices not to cross:—When notices put up by a railway company forbidding persons to cross the line at a particular point have been continually disregarded by the public and the company has not taken steps to enforce their observance, the company cannot, in case of an injury occurring to any one crossing the line, set up the existence of the notices by way of answer to an action for damages; *Dublin Wicklow & Wexford Ry. v. Slattery* 3 App. Cas. 1155; 39 L. T. 365; but it is no negligence on the part of a railway if a person while crossing on the foot-way notwithstanding "told not to cross" is knocked down and injured by a train on the crossing; non-compliance with regulations which are habitually disregarded is not necessarily sufficient to establish negligence. Halsbury Vol. XXI 449. *Ellis v. G. W. Ry. Co.* 43 L. J. C. P. 304; *Grey v. N. E. Ry.* 48 L. T. 904.

The defendants' servants shunted some vehicles on to a siding which was on an incline running down to a level crossing over a high way. The siding had a catch point which would have prevented the vehicles if set loose from running down the incline, but for the convenience of their shunting operations, the defendants' servants did not place the vehicles beyond the catch-point, but screwed down their brakes, and left them in a position in which they would not have caused any damage if not interfered with. Some boys, however, trespassing on the siding unscrewed the brakes and detached a vehicle which ran down the incline and injured the plaintiff who was lawfully passing along the highway over the level crossing. The defendants were aware that the boys were in the habit of trespassing on the siding and meddling with vehicles placed upon it. Held that the defendants were liable for the damage sustained by the plaintiff, since they were aware of the danger of interference with the vehicles and negligently omitted to take reasonable precautions to prevent the consequences of that interference, *McDowall v. G. W. Ry. Co.* (1903) 2 K. B. 331; but see *Rusoff v. Long & Co.* (supra).

Crossing line where no level crossing:—Where persons are in the habit of crossing the rails anywhere along the line there is no duty upon the company to provide for the protection of such persons *Harrison v. N. E. Railway Company* 29 L. T. 844.

License to cross:—License to cross a railway by a private path does not include a license to cross when trucks are on the railway, and it is not the duty of a company to warn persons against crossing when trucks are on the line. *French v. Wills Plymouth Company* (1908) 24 T. L. R. 644.

Duty of persons crossing a level crossing:—In the case of a level crossing, where a person on the crossing can see at the time whether trains are approaching or not, the fact that the Co. keeps no watchman there, or that the engine does not whistle, is not evidence of negligence. *Stabley v. L. & N. W. Ry. Co.* L. R. 1, Ex. 13; *Cliff v. Mid. Ry. Co.* L. R. 5 Q. B. 13.

Negligence-Condition of station premises.—In an action where the plaintiff was injured by falling on steps leading to the defendant's railway station which had become worn and slippery by use, the company was held liable. *Oskme v. L. & N. W. Ry. Co.* 21 Q. B. D. 220; (contra *Crafter v. Met. Ry. Co.* L. R. 1. C. P. 300; 35 L. J. C. P. 132) Keeping the stair case leading to the platform of a Ry. station with a brass nosing which had become worn and slippery from constant use is not conclusive proof of the company's negligence. *Crafter v. Metro Ry.* L. R. 1. C. P. 300. Their duty is to take reasonable care to keep their premises in such a state as that those whom they invite to come there shall not be unduly exposed to danger. *Welfare v. L. & B. Ry. Co.* L. R. 4 Q. B. 693; 38 L. J. Q. B. 241; but they are not bound to provide a staff of servants sufficient, not merely for the guidance of passengers and preservation of orders amongst them but adequate to control the violence of persons entering the station without permission. *Carriv v. Mid G. W. Railway Co.* 6 L. R. 1r. C. L. 199; but see contra *Fraser v. Caledonian Ry. Co.* 5 F. 41.

A passenger fell upon a piece of ice lying across the platform, held, there was evidence of negligence on the part of the company. *Shepherd v. Mid Ry. Co.* 25 L. T. 879. So also a passenger falling off platform during fog, *London Tilbury & Southend Ry. v. Paterson* II. L. (1913) 29 T. L. R. 413; A passenger while going down the stairs, stepped on banana skin and slipped and injured himself, the company was held guilty of negligence. 15 Cal. W. N. LXXXVII; 19-12-1910 K. B. D.

A railway company are guilty of negligence in not keeping the station properly lighted. *Woodhouse v. Cal. & S. E. Ry. Co.* 9 W. R. 73. *London, Tilbury & Southend Ry. Co. v. Paterson* II. L. (1913) 29 T. L. R. 413. It is not enough that the lights should be sufficient for the railway company and their own servants who know the premises; they must be enough to guide and direct strangers who are unacquainted with the station. *Martin v. G. N. Ry. Co.* 16 C. B. 180.

A space of two feet between the foot board and the platform was held to be evidence of negligence as not affording reasonable facilities to passengers for alighting. *Wharton v. L. & Y. Ry. Co.* 9 T. L. R. 142.

A person while working on a highway under a bridge, forming part of a railway line was hurt by a brick falling from the bridge. It amounted to negligence on the part of the railway company. *Kearney v. L. B. & S. C. Ry.* 40 L. J. Q. B. 285; *Lay v. Midland Ry. Co.* 34 L. T. 30; *Murray v. Metro. Dist. Ry.* 27 L. J. 762; Contra-*Daniel v. Metro. Ry. Co.* 40 L. J. C. P. 121.

It was the practice to unload coal waggons by shunting them, and tipping the coal into cells; it was also the practice for the consignees of the coal or their servants to assist in the unloading, and for that purpose to go along by the side of the waggon, with the permission of the station master. A consignee went to his waggon, which was shunted in the usual place, took some coal from the top of the waggon and descended on to the flogged path. The flog he stepped on gave

way and he fell into one of the cells and was injured; Held, that he was not a mere licensee but was engaged with the consent of the company, in a transaction of common interest to both parties and was therefore entitled to require that the premises should be in a reasonably secure condition. *Holmes v. N. E. Ry. Co.* 40 L. J. Ex. 121; L. R. 6 Ex. 123.

The defendants placed an obstruction across the footway during the hours prohibited by the metropolitan police, so that foot passengers were obliged either to get over the obstruction or to go round vans stationed in the roadway or to wait until the obstruction was removed. The obstruction was very slippery and in attempting to get over the obstruction, the plaintiff sustained serious injuries. In an action for damages:—Held, that the company was liable; for, if the inconvenience is so great that it is reasonable to get rid of it by an act not obviously dangerous, and executed without carelessness, the person causing the inconvenience by his negligence is liable for any injury that may result from an attempt to avoid such inconvenience. Dictum of Brett, J. in *Adams v. L. & Y. Ry. Co.* L. R. 4 C. P. 739 approved. *Lee v. Lixey* 63 L. T. 285.

Passengers, however, in using a station must exercise ordinary care, and must keep their eyes open to see where they are going, and the mere fact that there is an obstruction on a platform is of itself no evidence of negligence. Thus in *Cornman v. Eastern Counties Ry.* 29 L. J. Ex. 94, the plaintiff while walking on the platform which was somewhat crowded owing to the arrival of a train, caught his foot on the edge of a weighing machine, was tripped over and broke his knee-cap. At the trial it was found that the machine was used for weighing passengers' luggage and that it was standing in the usual place for the past five years. Held, there was no negligence on the part of the company. This case may be compared with *Sturges, v. G. W. Ry. Co.* 56 J. P. 278, where the plaintiff while walking along a platform in the crowd stumbled over a box containing signal-levers which projected about two inches above the level of the platform and thereby fractured her knee. Held there was evidence of negligence because the company had not taken all reasonable care to protect the passengers from danger and the Jury might have found that the plaintiff had not a fair and reasonable opportunity of seeing the obstruction, but when the plaintiff accompanying her daughter to a train in crossing the bridge was injured by a plank placed by a porter cleaning a lamp. Held no evidence of negligence on the part of a company. *Watkins v. G. W. Ry. Co.* 46 L. J. C. P. 817; *Lay v. Midland Ry. Co.* 30 L. T. 529; *G. W. Ry. Co. v. Davies* 39 L. T. 475; In the same way in an action where a railway porter wheeled a barrow with luggage thereon to a side entrance to the defendant's station, and left it stationary close to the top of some steps leading down to the public foot-path outside. Some licensed porters, not employed by or subject to the control of the defendants, rushed up the steps, and in a struggle for the luggage upset the barrow of trunks. These tumbled down the steps and injured the plaintiff, a passenger who was waiting on the foot-path for his luggage to be brought

out: Held, that the plaintiff was not entitled to recover. *Murphy v. G. N. Ry.* (1897) 2 Ir. R. 301.

The plaintiff sued for damages for injuries caused to his eye by a spark from an engine as he was leaving a station at the end of a journey. The path ran alongside the railway and was an authorised means of exit. Complaints had been made of danger from sparks to passengers using this path but the company did not protect it by a screen. Held there was evidence of negligence on their part. *Atherton v. L. & N. W. Ry. Co.* 93 L. T. 464; 21 T. L. R. 671.

Overcrowded platform-Negligence:—A woman with an infant in her arms was standing at a station waiting for additional carriages to be added to a train. Before the carriages were in position an orderly crowd of passengers collected behind the woman and as it pressed forward on the arrival of the carriages, she was pushed off on the carriages and was injured. In an action for damages, it was held that the injuries were not due to negligence on the part of the railway company. *McCallum v. North British Railway* (1908) S. C. 415 Ct. of Sess.

The Company are bound to take reasonable steps to regulate a crowd, which they have caused to assemble at a station and are liable to an action for negligence at the suit of a passenger injured through the default of this duty. *Norman v. S.E. Ry. Co.* 28 L. T. 271; They must also take reasonable measures to protect passengers from disorder likely to arise on their premises in consequence of their mode of conducting business. *Murphy v. G. N. Ry. Co. of Ireland* (1897) 2 I. R. 301 *McGregor v. Glasgow Subway Co.* (1901) 3 Sc. Sess. Cas. 1131.

Duty of railway companies towards the public resorting to its premises:—A Railway company is under a higher duty than that which the law imposes on the owner of private premises. In the case of a railway, the duty is created by invitation. If the invitee chooses to enter, he takes the premises as he finds them, subject to this that if the inviter knows of a danger which is not so obvious as become known to the invitee also, then the inviter must take reasonable means whether by notice, guarding, lighting, or otherwise to prevent injury to the invitee arising from the danger. But a railway company which carries on not merely a private business for its own benefit but an undertaking in which the public are interested and of which they are entitled to avail themselves, is under a duty to the public, not because of any invitation, but apart from invitation to afford proper and reasonable accommodation to the persons who come to do business with them. Railway Companies have a monopoly and statutory privilege; they come under a corresponding duty to all persons to whom the companies owe and are bound to render services to take reasonable care that their premises are safe. *Norman v. Great Western Railway Co.* (1915) 1 K. B. 584 (C. A.)

A Railway owning and working lines in a dock yard is under no obligation before beginning shunting operations to shut the dock gates opening on to a public street or to give special warning.

In a dock owned by a Railway Co. three lines of rails connecting the quays with the main railway system crossed the road leading into the dock, on the level at a point inside and opposite the dock gate. A seaman entered the dock by the gate which was open and attempted to pass between two waggons which were standing on the crossing. While he was doing so, the waggons were shunted and he was caught between the buffers and injured. In an action for damages against the Co. it was held that there was no duty on the railway company either to shut the gate or to give warning before beginning to shunt the waggons and the action was therefore dismissed. *Clarke v. North British Ry. Co.* (1912). S. C. 1 (Scotland).

Whilst traversing a footbridge erected by the depts over their line of railway, as an alternative to a level crossing the plff on her way to catch a train, slipped on frozen snow upon the steps of the bridge and sustained injuries. The plff filed a suit for damages in which it was held that where a highway had been dedicated to the public, the public must take it as they find it. There was no liability on the Company to repair or maintain the bridge. *Brakely v. Mid. Ry. Co.* (1916) C. A. 114 L. T. 1150. (Frost rendering steps of foot bridge slippery, deft not liable, the condition of the steps being perfectly apparent to plff, an intending passenger)

It is a well-settled principle of law that when statutory powers are conferred they must be exercised with reasonable care, so that if those who exercise them could by reasonable precaution have prevented an injury which has been occasioned and was likely to be occasioned, by their exercise, damage for negligence may be recovered. To bring this principle into play, the company must be shown to have been exercising a statutory power, the exercise of which was likely to occasion and did occasion the collision. *Great Central Ry. v. Hewlett* (1916) 2 A. C. 511 at p. 519.

Duty of railway company in incorporated towns—It is the duty of a railroad company in incorporated towns, where the public habitually uses its tracks and right of way as a foot-way, and the presence of persons on such tracks may therefore be reasonably anticipated, to operate its trains with the presence of such persons in mind; that is, to keep a look out, to give timely warning of the approach of trains and to have them under reasonable control. *Illinois C. R. Co. v. Murphy* 123 Kentucky Ct. of App. 787; 11 L. R. A. (N. S.) 252. *Louisville & N. R. Co. v. M. C. Nary* 128 Kent. Ct. of App. 420, 17 L. R. A. (N. S.) 224; *Asbury Smith's Administrator v. Cincinnati N. O. & Texas Pacific Ry. Co.* 41 L. R. A. 193. (Kentucky Court of Appeals). Contemporary Law Review (1916) Feb. No. P. 344.

Duty to warn wayfarers—In the case of a Railway Co., which is obliged under a statute to give timely warning to wayfarers on the approach of the train near level crossing it is not necessary for the protection of the company that the victim should hear the warning. It is only necessary that the warning should be such as ought to be apprehended by a person possessed of ordinary faculties in a reasonably sound active and alert condition, and the time given to avoid the danger should be such as would be reasonably sufficient for such a person as the one above mentioned to avoid it. If a company permit persons whose faculties it

to be defective to cross the line, that knowledge may possibly impose upon the duty to take greater care than would be required towards the ordinary traveller who is not so affected. *Grand Trunk Railway v. Meallpine* (1913) A. C. 1 (J. C.); 18 Cal. W. N. No. 13 p. LXX.

Travelling in guards van or on an engine—liability of company.—A plaintiff became a passenger by the defendant's railway from H. to M. When arrived at the station H. there was a great crowd and she got into the guard's van with several other persons with the guard's permission. When the train arrived M, it stopped but the van was not opposite the platform. The plaintiff began to get out of the van, but before she could do so, the train moved on and the plaintiff was injured. Held, in an action by the plaintiff to recover damages from the defendants for the injuries, there was evidence of negligence on the part of the defendants. *Stockdale v. L. & Y. Ry. Co.* 3 L. T. 289; *Harris v. Perry & Co.* (1902) 2 K. B. 219. (In this case the plaintiff was riding on an engine with the permission of the defendant's representative when he received injuries);

Negligence—liability for improper construction—defective machinery.—A carrier is bound to use due skill and care in the manufacture of carriages. If injury occur through imperfect construction, the onus is on the carrier to show that such due care has in fact been exercised. *Hellon v. L. & S. W. Ry. Co.* 14 Q. B. 542.

A railway company have a right to carry on their business on their own premises in such a way as they think fit; and so far as the conduct of such business is concerned, to use defective machinery e. g. for hoisting goods on their own premises, they are not guilty of negligence or liable in an action for damages. Under Lord Campbell's Act, *quoad* a third party lawfully on their premises, without invitation by words or conduct on their part so to do, chose to pass under a heavy package of goods which was in the act of being hoisted by a crane, which slipped from the sling by which it was *defectively* suspended and fell off and killed him whilst so passing under it, there being another way by which he might have gone without passing under the package in question, and the company having no reason to expect that people would pass under it. *Griffith v. L. & N. W. Ry. Co.* 14 L. T. 797.

Obstruction in highway—legalization by statute—negligence.—A Railway Co., for the more convenient management of their station, erected in a public highway certain gate posts from which collapsible steel gates could be raised across the road so as to close the entrance to the station yard. These posts were erected by the company in contravention of their Special Act, and in 1901 were judicially held to be an obstruction to the highway. In 1902 the company obtained an Act which empowered them to "maintain" the posts and gates and to replace them, when necessary on the same site.

It is a general proposition that a person who is clothed with a statutory power to do an act must in doing it exercise reasonable care to prevent injury to other

But in their case the statutory authority was not to do an act, but to leave things as they were. In 1902 the post was in the highway illegally. The statute of 1902 said you may leave it where it is. It thus became a post in the highway legally. The authority was not an authority to be active, but to be passive. The Act merely released an obligation, namely, the obligation not to obstruct the highway. From that state of facts no duty flows. If there be duty or authority to do an act it is possible to be negligent in doing it. If there be duty or authority to do or to abstain from doing an act according to circumstances it is possible to be negligent in doing or abstaining from doing it. But if the duty or authority be simply not to do an act—merely to leave things as they are—it is impossible to be negligent in not doing anything. *Great Cen. Railway v. Hewlett* (1916) 2 A.C. 511 at p. 526.

State of level crossing:—When a railway company constructs a line across a highway on a level, it is the duty of the company to keep the crossing in a proper state for the passage of carriages across the rails, and if a carriage is damaged in consequence of the rails being too high above the surface of the roadway, the company is liable. *Oliver v. N. E. Ry. Co.* 43 L. J. Q. B. 128; L. R. 9 Q. B. 409.

Negligence at level crossing:—See Sections 12 & 13 and the notes thereon.

Negligence in Shunting:—The plaintiff was engaged in loading a truck with stones and was standing in the truck for that purpose. The defendants by their servants so negligently backed, shunted, and managed certain trucks under the care and management of the company, that they were by the negligence and carelessness, breach of duty and improper conduct of the company, driven with great force and violence against the truck in which the plaintiff was standing and was greatly hurt. It was also alleged that the plaintiff was "lawfully engaged in loading the trucks". Held, that the first count that the plaintiff was injured while engaged in loading trucks could not be supported; that on the second count, as it was shewn that there was some duty of care on the part of the company towards the plaintiff to which he was entitled by being "lawfully" there, and a breach of that duty being an act of active negligence of the company, the plaintiff was entitled to damages. *Bulman v. Furness Ry. Co.* 32 L. T. 430, see also *Burke v. M. S. & L. Ry.* 22 L. T. 442.

Injuries from slamming doors of carriages:—A common cause of complaint against a railway company is that a passenger's fingers have been squeezed in the door of the carriage by a railway servant slamming the door without due warning. This is no doubt negligence on the part of the company's servant; but in many cases, the injury is due to the plaintiff's own negligence in putting his hand in a dangerous place of the door of the carriage and the company escape liability on the ground of contributory negligence. The result of the decided cases seems to be that if a person is in the act of getting in or out of a carriage, when his fingers are squeezed, the company will probably be held responsible; but if the passenger has actually seated inside the carriage and the door is closed, the company will be exonerated. Thus in *Drury v. N. E. Ry. Co.* (1901) 2 K. B. 322, it

was held that where a passenger is seated in a railway carriage, the fact that his finger is crushed owing to the shutting of the carriage door by a railway servant on the platform is no evidence of negligence. There is no duty cast upon the servants of a railway company to give warning of the shutting of a carriage door to passengers who are actually seated inside the carriage and are not in the act of getting in or out of it. See also *Benson v. Furness Ry. Co.* 88 L. T. 268, and *Taylor v. Great S. & W. Ry.* (1909) 2 Ir. R. 330 C. A.

Starting without warning—passenger injured by sliding door of a railway carriage:—A passenger got on at the rear end of a carriage and was going to seat when the train started more suddenly than usual with a jerk and he was thrown off his balance. To save himself, he put out his hand which was caught and injured by the closing of the sliding door, with which the carriage was provided, the door being closed by the momentum of the train in starting. No warning was given before the train started. This amounted to negligence and the plaintiff was entitled to judgment. *Delaney v. Metropolitan Ry. Co.* (1920) W. N. 194; 123 L. T. 484; C. A. 89. L. J. (K. B.) 878.

(b). **Door closed without warning:**—The plaintiff, when getting into a carriage, put his hand on the "hinge" side of the door of the carriage which was standing open. Before he got quite inside, the guard came along slamming the doors, and by slamming the door of the carriage in question, pushed the plaintiff in, and jammed his hand between the door and the door-post. In an action to recover damages for injuries sustained, the company was held liable. *Fordham v. London, Brighton and South Coast Ry. Co.* 18 L. T. N. S. 566; L. R. 3 C. p. 368; 38 L. J. C. P. 324 *Richardson v. Metro. Ry. Co.* L. R. 3 C. P. 374 see also *Maiden v. L. C. & Dover Ry. Co.* 38 L. T. 458, *Atkins v. S. E. Ry. Co.* 2 Times L. R. 91; *Gatherall v. Mersey Ry. Co.* 3 Times L. R. 508. The mere fact that the servant of a company shuts the door of a carriage with violence or without warning is no evidence in itself, of negligence. *Ger v. Metro Ry. Co.* L. R. 8 Q. B. 161. The mere fact of a passenger having his hand crushed through the shutting of the door by a servant of the company on the platform is not evidence of negligence in an action by the passenger against the Company *Druary v. North Eastern Ry. Co.* (1901) 2 K. B. 322. *Metro Ry. Co. v. Jackson.* L. R. 3 App. Cas 193 followed.

(c). **Door closed after warning given:**—The plaintiff after getting into a carriage, left his hand for half a minute on door-jamb; the guard, after calling out "Take your seats" shut the doors of the carriages, and, not seeing the plaintiff's hand, crushed his thumb in shutting the door. Held there was no evidence of negligence. *Richardson v. Metro. Ry. Co.* 18 L. T. N. S. 721; 37 L. J. C. P. 300.

(2) The carriage in which the plaintiff was travelling was already full. At a station P there were a number of persons waiting for a train. The door of the carriage was opened and some of the passengers tried to get in when the plaintiff rose from his seat to prevent them. While he was standing the train started, and a porter after warning the passengers trying to get in to stand back, shut the door as the

train was entering a tunnel. At the time when the train started the plaintiff, in order to save himself from falling, put his hand on the lintel of the door and when the door was slammed his thumb was caught and crushed. Held, there was no evidence of negligence. *Jackson v. Metro. Ry. Co.* L. R. 3 App. Cas. 193; 37 L. T. N. S. 679; 47 L. J. C. P. 303; *Bullner v. L. C. & Dover Ry. Co.* 1 Times. L. R. 534, (but see *Jones v. G. W. Ry. Co.* 1 Times. L. R. 333, in which the above case of *Jackson v. Metro. Ry. Co.* was distinguished).

Happening of accidents through doors flying open:—Many accidents have also happened through doors flying open. They may happen either through the negligence in not shutting the doors of carriages before the starting of trains or through the defective construction or want of proper repair of the fastenings. The doors of the railway carriages in motion are supposed by passengers to be securely fastened, but if they are not so fastened and an accident ensues, the company will be liable for the results.

It is the duty of a railway company to see that the doors of the carriages are properly shut and fastened before the train leaves any particular station, see *Gee v. Metro. Ry. Co.* L. R. 8 Q. B. 161; *Metro. Ry. Co. v. Jackson* 3 App. Cas. 193 *Richards v. G. E. Ry. Co.* 28 L. T. N. S. 711; *Adams v. L. & Y. Ry. Co.* L. R. 4 C. P. 739. The above cases also establish that leaving the door open or unfastened amounts to negligence on the part of the railway company, for the consequences of which the company is liable to passengers. *Robison v. N. E. Ry. Co.* L. R. 10 Q. B. 271; *Lee Vs. Lacey* 63 L. T. 285; *Wakelin v. L & S. W. Ry. Co.* 12 Ap. Ca. 41; *Engelhart v. Farrant & Co.* (1897) L. Q. B. 240; *Burns v. North British Ry. Co.* (1914) S. C. 754. (Damages awarded when an open door of a train in motion injured a passenger walking on platform). *Bromley v. G. I. P. Ry. Co.* 24 Bom. 1; *Dullabji v. G. I. P. Ry. Co.* (1910) 12 Bom. L. R. 73; *Warburton v. Mid Ry. Co.* 21 L. T. 835; *Toal v. North British Co.* (1908) A. C. 352. (In this case the plaintiff alighted from a train and while standing on the platform he was struck by the door of the carriage which had been left open as the train moved out of the station the railway was held liable).

(a). **Looking out of the window—leaning on the door:**—It is not, as a rule, any negligence on the part of a passenger to lean on the door when looking out of the window. Thus in *Gee v. Metro. Ry. Co.* (L. R. 8 Q. B. 161, 28 L. T. N. S. 282; 42 L. J. Q. B. 105) the plaintiff and his brother were passengers on the defendant's railway. In the carriage of that railway there was a small brass rod across the window to prevent persons from putting their heads to more than a small extent out of the window. Some conversation having arisen between the plaintiff and his brother with respect to the mode of signalling on that railway, the plaintiff stood up to explain the system to his brother and told him "If you will look out when I tell you, you will see the lights for S. S." He then stood up to look out and took hold of the cross-bar on the window of the off-side door and lent a little forward for the purpose of looking out, when the door immediately

if there be great inconvenience and little peril, it may not be reasonable in some cases to run the risk." *Adams v. L. & N. Ry. Co.* 38 L. J. C. P. 277; *Jones v. Boyce*, 1 Stark 493.

(c). **Choice of dangers.**—A person may be justified in jumping out of a carriage if he is compelled to choose between a dangerous leap and the certainty of peril if he remains; but a mere harm will not justify the leap or render the company liable for any injury received in consequence. *Jones vs. Boyce* 1 Stark 493. *Kearney v. G. S. & W. Ry. Co.* 18 L. R. Ir. 303.

(f). **Injuries caused by being thrown down by the train giving sudden jerks.**—Passengers have often complained of injuries caused to them by being thrown down by a train giving a sudden jerk while they may be in the act of getting in or out of it. The general answer to such a complaint is that the passenger was either attempting to get in or out of it while it was in motion. Thus in *Hellawell v. L. & N. W. Ry. Co.* 26 L. T. N. S. 557, the plaintiff was a traveller on the defendant's railway from M. to H. When the train arrived at H, several porters ran to it before it stopped, and opened the doors of the carriages, calling out "All out for H." The plaintiff thinking the train had stopped, put her foot on the step to alight. Just then the brake was taken off and the train which had nearly stopped, moved on a little way with a sudden jerk, causing the plaintiff to fall down and break her leg. In an action it was held that there was negligence on the part of the company in opening the doors while the train was moving.

The same principle was followed in another case in which when the train was running at full speed, the plaintiff stood up in the carriage in which he was travelling while he was so standing the driver in order to save the life of a man who was on the line, suddenly applied the brakes of the train, causing it to pull up with such a violent jerk that the plaintiff was thrown down and injured. In an action to recover damages it was held that, as there was evidence that the man was on the line through negligence on the part of the company, there was evidence that the violent stopping of the train was due to negligence on the part of the company, *Angus v. London, Tilbury and Southern Ry. Co.* 22 T. L. R. 222. See also *Delaney v. Metro Ry. Co.* (1920) 89 L. J. (K. B.) C. A. 878 (where hand of a passenger in carriage caught by sliding door when train started with jerk held evidence of negligence).

(g). **Injury through window falling suddenly.**—The mere fall of a railway carriage window from the ledge, is not evidence of negligence which will support an action against the company for personal injury caused to a passenger in the carriage by the sudden descent of the window. With regard to the windows of carriages, the responsibility of a railway company is very different, as it cannot reasonably be expected to examine them at every stop. Thus in the case of *Murray v. Metro. Dist. Ry. Co.* 27 L. T. 762 the plaintiff who was sitting next the door of the carriage, had allowed his hand to rest on the window-sill, and as the train neared a station, the brake was suddenly applied, the vibrations of which caused

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the window to fall from the ledge on which it rested, seriously wounding his finger. He sued for damages but was non-suited, holding that there was no evidence of negligence. *Chief Baron Kelly* said "There is no evidence of negligence unless it be contended that the company are bound to examine each window of each carriage before each journey."

In the same way a passenger, who allows his hand to rest on the window sill of the carriage in which he is travelling and receives an injury to the part (of the hand) extruded, is guilty not only of negligence by putting himself outside the carriage, but of contributory negligence which disentitles him to recover against the company, provided that, no matter what negligence the company has been guilty of, that could not have caused the passenger any injury so long as he remained inside the carriage. *Dullabhji v. G. I. P. Ry. Co. & Anns v. G. I. P. Ry. Co.* (1910) 12 Bom. L. R. 73; *Todd v. Old Colony &c. Rail road Co.* 89 Mass 207. *Pirie vs. Caledonian Ry. Co.* 17 Rept 1165.

Injury owing to no platform:—The Company was held guilty of negligence in a case where after the train had stopped, the plaintiff opened the door from the inside and stepped out and there being no platform fell down and injured himself. *Brearly vs. London and N. W. Ry. Co.* 15 T. L. R. 237.

Trains overshooting platform—Invitation to alight:—Many cases of accidents to railway passengers have also often been complained of owing to the train or some portion of it not stopping alongside the platform. Sometimes the train is either too long for the platform, or the driver does not mind the speed at which the train is running and consequently it either overshoots the platform or brings it to a standstill too soon. Whatever the cause, the result frequently is some injury to a passenger who is either unaware of the fact, or being aware of it, still endeavours to get down, either to avoid delay or in the fear that the train will proceed without allowing him any time to get out. Thus the subject is of great importance both to the railway and to the travelling public and hence it is necessary to consider carefully as to what are the circumstances which may cast liability on a railway company for injuries arising from accidents due to such causes. Thus the questions to be considered will be (1) Whether the plaintiff was in any way misled as to the circumstances by any acts or omissions on the part of the company's servants. (2) Whether the plaintiff acted with full knowledge of the position and its attendant risks? (3) Was there such a state of circumstances as might lead a man of ordinary prudence to believe that there was an invitation to alight?

The decisions on the subject are, however conflicting and it is very doubtful whether the dictum enunciated in the English cases will apply to India because at many of the stations, platforms are hardly to be found.

Merely overshooting, with an invitation to alight, is not necessarily or by itself negligence; to constitute negligence there must be on the part of the railway company, some other act or omission, which exposes the passenger to a

v. L. B. & S. C. Ry. Co. 18. C. B. N. S. 225. *Owen v. G. W. Ry. Co.* 46, L. J. Q. B. 486; *Harrold v. G. W. Ry. Co.* 14 L. T. N. S. 440, *Abbot v. North British Ry. Co.* Ct. Sess (1916) s. c. 306 (Carriage stopping short of platform) In *Illinois Ry. v. Cheek* 53 N. E. 641, a train stopped at a station, so that some of the carriages were beyond the platform, a passenger in trying to get into one of these carriages with the assistance of a servant of the company was injured by the negligence of that officer. The railway company was held liable.

(b). **Invitation to alight**—The mere calling out of the name of a station cannot, by itself be held to indicate an invitation to alight; but if a train is brought to a stand-still at a station, and after a reasonable time, no warning is given to passengers, they may reasonably infer that it is intended that they should get out if they purpose to alight at the particular station; such a conduct of the company amounts to an invitation to alight. If a passenger calls for or shows a desire to obtain assistance and no assistance is offered it would probably be considered that there is evidence of negligence if an accident happens to the passengers in alighting. *Robson v. N. E. Ry. Co.* L. R. 10 Q. B. 271; *Lewis v. L. C. & Dover Railway Co.* 29 L. T. N. S. 397; 43 L. J. Q. B. 8. The opening of the carriage door by the company's servants is a fair indication of an invitation to alight. *Cockle v. South Eastern Ry. Co.* 27 L. T. N. S. 320; L. R. 7 C. P. 321; *Praeger v. Bristol & Exeter Ry. Co.* 24 L. T. N. S. 105; *Glasscock v. London Tilbury & Southend Ry. Co.* 19 T. L. R. 305. (In this case as soon as the train stopped, but before the guard had left his van, the plaintiff had jumped out and was injured and was successful in recovering the damages).

Gate left open at a railway level crossing is an invitation to cross and an intimation that it could be crossed safely—Negligence:—A gate at a railway level crossing left open, is an invitation to all comers to cross the line and an intimation that it could be crossed with safety, and is evidence of negligence for which the Ry. Co., may be made liable in the absence of contributory negligence on the part of the party injured in consequence of such negligence. *Bengal Provincial Ry. v. Gopi Mohan Singh* (1914) 18 Cal. W. N. 325; 41 Cal. 308. See also *Jenner v. S. E. Ry. Co.* 55 S. J. 555, 12 Lawyer p. III, p. 15; 13 Bom. L. R. 159.

Backing of train—If the train is carried so far beyond the platform that a reasonable person would suppose that it must be backed and a passenger in getting out is thrown down by reason of the train backing, there is no evidence of negligence of the Company, *Lewis v. L. C. & Dover Ry. Co.* 9 Q. B. 66.

Stopping trains at dangerous places—If by reason of the darkness of the night or because the spot in question is in a tunnel the passenger cannot see the danger there may be in getting out and he alights either upon an express invitation from the company's servants or after waiting a reasonable time and an accident happens, there is evidence of negligence. *Praeger v. Bristol & Exeter Ry. Co.* 24 L. T. 105; *Weller v. L. B. & S. C. Ry. Co.* L. R. 9 C. P. 126; *Gill v. G. E. Ry. Co.* 26 L. T. 945.

(c). **Negligence of employee:**—The plaintiff, a passenger in a train while alighting was injured by falling to the ground. The guard reached out his hand to help her, taking her arm by the elbow, but before she had stepped down to the platform, withdrew the support of his hand with the result that she fell between the platform and the car. In a suit by the plaintiff against the company for damages it was ruled that a carrier of passengers is under no obligation to supply a servant to help passengers to get down from the cars, but where a servant of the company does offer such help, he is bound to be careful, and if by his negligence, the passenger is injured, the company is liable. *Haulon v. General Railway Co.* 187 N. Y. 73.

Carriage not adapted to platform—No foot-board—Stop too high above a platform:—The plaintiff was travelling at night. At station A while attempting to alight, his foot found no support and he fell between the carriage and the platform and was injured. The carriage was too wide to admit of a foot-board being attached to it and so a space of about 4 inches intervened between it and the platform. In an action for damages the company was held liable. *Churchill v. South Eastern Ry. Co.* 4 Times L. R. 418; In the case of *Wharton & Wife v. L. & Y. Ry. Co.* 5 Times L. R. 142, the injury was due to the carriage not being adapted to the platform. In this case the plaintiff having received injuries owing to the footboard being one foot below the floor of the carriage and two feet above the platform, sued the company for damages in which it was held liable, the reason assigned being that a railway carriage is supposed to be properly constructed for ordinary passengers to alight without special assistance; and if the unsuitability of the steps is such as to amount to a danger and not merely inconvenience, the company will be held liable for the consequences. See also *Folkes v. Mersey Ry. Co.* 8 times L. R. 289.

No evidence of negligence:—The fact of the occurrence of an injury is not conclusive proof of negligence. *Birt v. G. N. Ry. Co.* 28 L. J. Ex. 3; mere proof of an accident having happened to a train does not cast upon the railway company the burden of shewing the real cause of the injury. *Hammock v. White* 11 C. B. 594; 31 L. J. C. P. 129; *Smith v. Midland Ry. Co.* 57 L. T. 813; The mere omission to whistle was also held no evidence of negligence causing mis-adventure. *Wakelin v. L. & S. W. Ry. Co.* H. L. 1886, 12 app. Cas. 41; 56 L. J. Q. B. 229; *Harrison v. N. E. Ry. Co.* 29 L. T. 844; *Newman v. L. & S. W. Ry. Co.* 55 J. P. 375; *McDonnet v. G. S. & W. Ry. Co.* 24 L. R. Ir. 369; *Curtin v. G. S. & W. Ry. Co.* 22 L. R. Ir. 219, as there is no positive duty to whistle. *Newman v. L. & S. W. Ry. Co.* (supra.)

A person using a railway station, through which there was a public right of way, was bitten by a dog which was not the property of the company. Held there was no evidence of the negligence on the part of the company or their servants. *Smith v. G. E. Ry. Co.* 36 L. J. C. P. 22; L. R. 2, C. P. 4.

Injury caused by entering into a wrong room:—There were two doors in close proximity to each other, on the platform of a railway station, the one for

Neeman v. Hosford (1920) 2 I. R. 258; *H. & C. Grayson Ltd. v. Ellerman Line Ltd.* (1920) A. C. 466; Similarly in *Dacey v. L. & S. W. Ry. Co.* L. R. 12 R. B. D. 70, at p. 71; 52 L. J. Q. B. 665. Brett, M. R. remarks:—"Even though the defendants were guilty of negligence which contributed to the accident, yet if the plaintiff also was guilty of negligence which contributed to the accident, so that the accident was the result of the joint negligence of the plaintiff and of the defendants, then the plaintiff cannot recover; it being understood that, if the defendants' servant could by reasonable care have avoided injury to the plaintiff, then the negligence of the plaintiff would not contribute to the accident."

Also the whole law on the subject of negligence and contributory negligence is most admirably summed up in Halsbury's laws of England Vol. XXI, under the head of *Negligence* and sub-head thereof dealing with *Contributory negligence*. As a result of a very careful consideration of all the authorities on the subject, the law of contributory negligence is summed up at pp. 455 & 456 in the following terms:—

"In an action for injuries arising from negligence it is a defence, if the defendant proves that the plaintiff by some negligence on his own part, directly contributed to the injury in the sense that it formed a material part of the effective cause thereof. When this is proved, the plaintiff's negligence is said to be contributory..... in order that a plea of contributory negligence may be successful it must be shown either that there was negligence on the part of the plaintiff which contributed to the accident and that the defendant could not, by using ordinary care, have avoided the accident, or that, notwithstanding the defendant's negligence, the plaintiff could, by exercising ordinary care, have avoided the accident. Where, therefore, the defendant is negligent and the plaintiff alleged to have been guilty of contributory negligence, the test to be applied is whether the defendant's negligence was the real, direct and effective cause of the misfortune. See *Jehangir v. B. B. & C. I. Ry. Co.* 37 Bom 575. *Dullabji v. G. I. P. Ry. Co.* (1910) 12 Bom. L. R. 73; *Radley v. L. & N. W. Ry. Co.* L. R. 1 App. Cas. 754; *Dowsett v. L. T. & S. Ry. Co.* (1883) Times. L. R. Vol. I. P. 326; *Langton v. L. & Y. Ry. Co.* (1888) 3 Times L. R. 18; *Walton v. L. B. & S. C. Ry. Co.* 1 H. & R. 424; *Greenland v. Chaplain* 5 Ex. 248; but if an injury occasioned partly by the negligence of the plaintiff and partly by that of the defendants, the plaintiff cannot maintain an action. *Williams v. Hildland* 6 Car. & P. 23; *Wetherby v. Regents Canal Co.* 12 C. B. 2; *Caswell v. Work* 5 El. & B. 849; *Springett v. Ball* 4 F. F. 472; *Wright v. Mid. Ry. Co.* 51 L. T. 539; *Sayer v. Hatton* 1 Cab. & C. 492; *Dawcy v. London & S. W. Ry. Co.* 12 Q. B. D. 70; *The Grand Trunk Ry. Co. v. McAlpine* (1914) 18 Cal. W. N. No. 13 p. LXX; 109 L. T. 693.

(a). **Of Children:**—But the same amount of care and caution cannot be expected from a young child as from a grown up person, and therefore where contributory negligence is alleged against a child, a less strict standard of care will generally be applied in testing whether it has been guilty of such negligence. Thus where a railway company erected a foot-bridge over their line, sides of which were fenced by ironworks, and a child of very tender age, fell through the fencing the openings being too large, it was held, in an action for damages by the child that

719, a grandmother with a child in her care, negligently crossed the line when a train was closed at hand. She was killed and the child was injured and brought an action against the company for damages. The court held that there was negligence both on the part of the company as well as on the part of the deceased woman, but none on the part of the child. It further held that under the circumstances, it was so identified with its grandmother that it was not entitled to succeed in the action. See also *The Bernina* L. R. 13 App. Cas. 1; and *Narayan Jetka v. The Municipal Commissioners of Bombay* 16 Bom. 254.

(c) **Identification of a fellow servant**:—A travelling Inspector of the carriage department of the *L. & N. W. Ry. Co.* was travelling with a free pass of that company in a train of theirs upon a journey on the railway of the *L. & Y. Ry. Co.* over which the *L. & N. W. Ry. Co.* had running powers. Whilst so travelling, the train in which he was, came into collision with a train of the *L. & Y. Ry. Co.*, and the Inspector received injuries. In an action by the plaintiff against the *L. & Y. Ry. Co.*, Held that the contributory negligence of the driver of the *L. & N. W. Ry. Co.*'s train with whom the plaintiff must be identified, disentitled him to maintain an action for damages against the *L. & Y. Ry. Co.* for their negligence. *Armstrong v. L. & Y. Ry. Co.* 34 L. J. Ex 89; 33 L. T. 228.

(d) **Of third party**:—If the accident or the injury is the result of a joint negligence of both the defendant and a third party, the defendant will not be exonerated from the consequent liability if his negligence was a proximate cause of such an accident. The third party will also be liable. In short, an action may be maintained against either or both of them. *Harrison v. G. N. Ry. Co.* 33 L. J. Ex 266; 10 L. T. N. S. 621; *Clarke v. Chambers* 47 L. J. Q. B. 427; 3 Q. B. D. 327.

(e) **Deafness**:—Deafness of a person crossing a railway line is contributory negligence in him, if by reason of that defect he is unable to hear a warning given to him by the company's servant at the crossing. *Skellon v. L. & N. W. Ry. Co.* 36 L. J. C. P. 249; *Stubble v. L. & N. W. Ry. Co.* 35 L. J. Ex. 3; L. R. 1. Ex. 13; *Smith v. Browne* 28 L. R. Ir. 1.

Doctrine of Contributory negligence not applicable in criminal actions:—The doctrine of contributory negligence does not apply in criminal actions. *Blenkinsop v. Ogden* (1898) 1 Q. B. 783.

Burden of proof in such cases:—The general principle as to which party will have to give affirmative evidence on the subject and which have to rebut it, is well illustrated by Lord Wensleydale in the case of *Morgan v. Sim*. 11 Moo. P. C. C. 307 at p. 311 "The party seeking to recover compensation for damage must make out that the party against whom he complains was in the wrong. The burden of proof is clearly upon him, and he must show that the loss is attributable to the opposite party. If at the end he leaves the case in even scales, and does not satisfy the court that it was occasioned by the negligence or default of the other party, he cannot succeed. See also *Cotton v. Wood* 8 C. B. N. S. 568. Thus in *Cohen v.*

Metro Ry. Co. 6 Times L. R. 192 (1890) where the plaintiff had received injuries owing to the slamming of a carriage door by the company's servant, the court intimated that the plaintiff in order to succeed, must make out a *prima facie* case of negligence on the part of the company by showing that there was something which the person shutting the door had omitted to do.

Thus it is clear that the plaintiff must first prove negligence against the defendant which generally arises from the occurrence of the accident and consequent damage. The burden is then thrown on the defendants who have to rebut the presumption of negligence so raised against them. In such cases the principle of "*Res Ipsa loquitur*"—occurrence speaks for itself—applies. When such a principle applies is well enunciated by *Earl C. J.* in *Scott v. The London Docks Co.* 34 L. J. Ex. 220. He said "Where the thing is shewn to be under the management of the defendant or his servants, and the accident is such as, in the ordinary course of things, does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care." Generally in a case charging negligence, it is for the plaintiff to prove negligence of a duty owing to him, and the mere fact of an accident is not generally *prima facie* evidence of negligence, but if the cause of the accident be shewn, this may or may not be *prima facie* evidence, according to its nature. *Wing v. London General Omnibus Co.* (1909) 2 K. B. 652.

Thus the onus of proving negligence is on the plaintiff *Hammack v. White* 11 C. B. N. S. 588; and of proving contributory negligence on the deft. *Dublin IV. Ry. Co. v. Slattery* 3 App. cas. 1155, *Wicklow v. L. & S. IV. Ry. Co.* 12 App. cas. 41; *Kaghor v. Yule*, 14 Suth. W. R. 45 & *Woodhouse v. C. & S. E. Ry.* 9 Suth. W. R. 73—See Ratanlal on Tort p. 475.

But where there is a statutory obligation, any breach of that which causes an accident is conclusive against the defendant, apart from special proof of negligence, but the breach of the duty must in itself, be the cause of the accident, and the rule does not extend so far as to exclude the defence of contributory negligence. *Duttalji v. G. I. P. Ry. Co. & Anna v. G. I. P. Ry. Co.* 12 Bom. L. R. 73 at p. 82.

Measure of damages in cases of personal injuries:—Where negligence is the cause of injury, only such damages can be recovered as are the natural and reasonable result of such negligence. In case of injury to goods, the damages can be easily ascertained but in cases of injury to person, it becomes a question of greater difficulty in measuring the same. Damages such as loss of wages and medical expenses can be easily calculated, but it becomes very difficult when one has to assess them for a lost eye or a lost leg, or a broken limb or compensation for pain and suffering to his person. Generally speaking, the scope of damages awardable in cases of personal injury embraces. (1) Expenses consequent on injury—They include actual out of pocket expenses for extra nourishment and medical attendance. (2) Compensation for loss or income derived from the professional or commercial

avocation in which the injured person was actually engaged at the time of the accident. (3) Compensation for pain and suffering. (4) Compensation for permanent ill effects. These include a recompense for shattered health if recompense indeed be possible in the case of an active healthy person being struck down and reduced from enjoyment of life to utter helplessness. (*Blake v. Mid Ry.* 13 Q. B. 93; *Smith v. S. E. Ry. Co.* reported in "Times" newspaper of 27-2-1893). Damages may be given for loss of profits in business. *Bradburn v. L. & W. Ry. Co.* L. R. 10 C. P. 189 (*Theobald Railway Passengers Assurance Co.* 23 L. J. E. U. 249 overruled); probable increase of income may be taken into account *Fair v. L. & N. W. Ry. Co.* 21 L. T. 326; *Johnston v. G. W. Ry. Co.* (1901) 2 K. B. 250; 91 L. T. 157.

In estimating the damages, neither the private means of the injured person (*Phillips v. L. & S. W. Ry. Co.* 5 C. P. D. 280, 49 L. J. C. P. 233) nor the fact that he may have insured his life against accidents, are to be taken into account. (*Bradburn v. G. W. Ry. Co.* L. R. 10 Ex. 1; 44 L. J. Ex. 9) *N. C. Atlantic v. B. B. & C. I. Ry. Co.* 28 June 1909 Bom. H. Ct.; for, the injured person does not receive that sum of money (from insurance) because of the accident, but because he has made a contract providing for the contingency; an accident must occur to entitle him to it, but it is not the accident, but his contract which is the cause of his receiving it.—Per Pigot J. in *Bradburn's case*—vide *Supra*.

Damages for mental injuries and nervous shock:—Damages in a case of negligent collision must be the natural and reasonable result of the defendant's act; damages for a nervous shock or mental injury caused by fright at an impending collision are too remote. *Victorian Ry. Commrs v. Coultas* 57 L. J. P. C. 69; 13 A. C. 222; *The Notting Hill* 9 P. D. 105; but this ruling is not followed in *Dulien v. White* (1901) 2 K. B. 669, wherein it was held that where nervous shock is caused to a person by an act of negligence which gives rise to a reasonable fear of immediate personal injury, damages for such injury are not too remote and may be recovered although no actual impact occurred. Irish & Scotland courts have also arrived at the same conclusion in *Byrne v. G. S. & W. Ry. Co.* (unreported but decided in 1882); *Bell v. G. N. Ry. of Ireland* 26 L. R. Ir. 428; & *Coeper v. Caledonian Ry. Co.* 4 F. 880.

Injuries to a child en ventre sa mère damage too remote:—A child cannot maintain an action for injuries sustained while *en ventre sa mère*. A woman who was quick with child, was injured in a railway accident and the child when born was found to be wounded, permanently injured and crippled. He claimed damages from the company but it was held that such a damage was too remote. *Walker v. G. N. Ry. Co. of Ireland* (1890) 28 L. R. Ir. 69, but see however *Brown v. Chicago &c. Ry. Co.* 54 Wisconsin 342; 41 Am. rep. 41 where a pregnant woman was carelessly directed by the brakeman to leave the train three miles short of her destination. The walk brought on a miscarriage and therefore the defendant was held liable.

Unpunctuality of trains—Effect of time-tables.

Liability for unpunctuality of trains and errors in Time-Tables:—How far a company is responsible for delay and unpunctuality in running their trains or for making and publishing misleading statements in time-tables, is a question of great importance and interest both to the railway and to the travelling public. The conditions and regulations published by various companies are numerous, and to some extent they differ on different railways. It is, therefore, not possible to consider them in detail. They are, however, binding both upon the companies and the passengers.

(a). **Common law duty-granting of ticket no warranty of punctuality:—**The duty of a carrier of passengers at common law is simply to carry them to their destination within a reasonable time, and it has been expressly held that mere granting of a ticket imposes on a railway company no obligation to have a train ready to start at a definite time. *Hurst v. G. W. Ry. Co.* 19 C. B. N. S. 310; 34 L. J. C. P. 264; *Fitzgerald v. Mid Ry. Co.* 34 L. T. 771; *Woodgate v. G. W. Ry.* 33 W. R. 42.

(b). **Effect of issue of time-tables and bills.**—But railway companies invariably issue time-tables and bills so as to vary their common law liability; and the issue of such time-tables amounts to an express contract with the public. The usual condition which the companies seek to enforce is that "*though every attention will be paid to ensure punctuality they do not warrant the departure or arrival of the trains at the times specified in the time bills.*" On the whole, it is clear that a company cannot contract itself in this way out of its liability to be reasonably punctual. But on the other hand, it is not to be held liable merely because a train is late. It must be positively shewn that the lateness is due to neglect to pay every attention which is promised. Of course the extreme lateness of a train would suggest a presumption of such negligence; but it would be open to the company to rebut it by showing that it was due to a fog or strong wind, or the slippery state of the rails, or flood, or to some other circumstance over which they had no control. *Fitzgerald v. Mid Ry. Co.* 34 L. T. 771. In *Woodgate v. G. W. Ry. Co.* 51 L. T. 826, (In this case the train took 10 hours instead of 6 as advertised to arrive at destination) *Smith J.* while delivering the judgment said "In accordance with the decision in the case of *Le Blanche v. L. & N. W. Ry. Co.*, that the taking of the ticket, the time-table and the conditions formed the contract under which the *G. W. Ry. Co.* undertook to carry Mr. Woodgate. Then, that being my opinion the question arises, what is the meaning of the contract?.....I think no man can read this clause without coming to one conclusion. It does not say, 'we will be liable in no case,' but it simply says this; 'If you as a passenger, have incurred any loss, inconvenience, or injury by reason of delay or detention, we will compensate you if you prove it is by the wilful misconduct of our servants, but otherwise not. See also *McCarton v. N. E. Ry. Co.* 54 L. J. Q. B. 443; *Dry v. L. & N. W. Ry. Co.* 16 T. L. R. 293; *Cooke v. Mid Ry. Co.* 57 J. P. 388

The company issuing such time-tables will be liable for damages occasioned to a plaintiff by the above representation, if such a train does not run, or runs only for a portion of the advertised journey, even though the incompleting portion is over the line of another company. *Denton v. G. N. Ry. Co.* 25 L. J. Q. B. 129 wherein Lord Chief Justice Campbell in the course of his judgment remarked:—"It is all one, as if a person duly authorised by the company had, knowing it was not true, said to the plaintiff, 'There is a train from M to H, at that hour'. The plaintiff believes this, acts upon it, and sustains loss. It is a well established law that where a person makes a certain statement, knowing it to be untrue to another, who is induced to act upon it an action lies. The facts bring the present case within that rule."

(c). **Time-table is an indication of time before which train will not start:**—Thus, in short, the time shown in the time-tables, is nothing but an indication of the time before which a train will not start, and *at or about* which time the company intend to run a train. Hence, if a company starts a train before the advertised time it will be held liable for damages in an action if a person who might have arrived in time to catch the train if it had not started sooner than the time advertised. But such mistakes are hardly committed by any companies.

(d). **Liability for taken off train announced as running:**—If a train which has been taken off, is announced as still running in the current time-table of a railway company, this is false representation and a person, who by relying on it has missed an appointment and incurred loss, may have an action for deceit. *Denton v. G. N. Ry.* (1886) 5 E. & B. 860.

(e). **Liability for advertising a wrong through train:**—Where a railway company advertised, by their time-tables, a through train from London to Hull after they knew that the connecting train (belonging to another company) had been discontinued, and a passenger, having made his arrangements on the faith of these time-tables, travelled by an early train from London to Peterborough, one of the defendant company's stations and after transacting his business there, asked for a ticket from Peterborough to Hull by the evening train, so advertised, and found there was no such train, and brought an action for damages, it was held that he was entitled to recover on the ground that the circulation of the time-tables amounted to a representation on the part of the defendants that there was a train, which was false to the knowledge of those making it, and calculated to induce the plaintiff to act as he did. *Denton v. G. N. Ry. Co.* 5 E. & B. 860.

No liability for failing to awaken passengers:—Where a railway conductor promises to awaken a passenger at the station where he is to get off, but fails to do so whereby he is carried beyond his station and put to damage and inconvenience, the railroad company is not liable *Missouri &c. Co. v. Kendrick* Texas Court of Appeal (—Ratanlal on Tort. p. 415).

Notification of arrival and departure—Conditions against liability for keeping time:—The notification of the hours of arrival and departure of trains

a passenger to put the company to an expense to which he could not think of putting himself if he had no company to look to."

But if he sustains any accidental injury or illness in the course of reaching his intended destination by such means, he is not entitled to any compensation, for, such consequences could not be within the contemplation of the parties at the time of contracting. *Hamlin v. G. N. Ry. Co.* 26 L. J. Ex. 20; nor for loss arising from being prevented from attending business engagement. *Hobbs v. L. & S. W. Ry. Co.* L. R. 10 Q. B. 111; 14 L. J. Q. B. 49. In the latter case Cockburn, C. J. said "It must be in the contemplation of the parties that passengers put down at a wrong place will have to get home. If there are means of doing so, they must avail themselves of them, and the company are responsible, and must compensate for the inconvenience which the absence of means causes."

What damages may and may not be recovered:—In England it is a clear rule that *damages cannot be obtained for the loss of a business engagement*, such loss not being in the contemplation of both parties at the time of contract. (*Backmaster v. G. E. Ry. Co.* 23 L. T. 471); nor can damages be obtained for the *disappointment and annoyance* which the traveller will naturally feel; however damages may be obtained for personal inconvenience, but not the doctor's bill if the plaintiff catches cold in consequence of having to walk home. *Hobbs v. The London & S. W. Ry. Co.* 10 Q. B. 111, (not approved in *Me Mohan v. Field* 7 Q. B. D. 591; nor for an accidental injury or illness occasioned to him in the course of reaching his destination. *Hamlin v. G. N. Ry. Co.* 26 L. J. Ex. 20. Under certain circumstances hotel expenses may be recovered from the company. *Hamlin v. G. R. Ry. Co.* (vide supra); Whether the belated traveller is entitled to recover the cost of a special train to reach his destination depends upon the fact whether a person in such a position would have been likely to incur it, if the delay had been due to his own fault, and not to that of the Company. *Le Blanche v. L. & N. W. Ry. Co.* 45 L. J. C. P. 521; *G. W. Ry. Co. v. Lowenfield* 8 Times L. R. 230.

In India such a question is governed by S. 73 of the Indian Contract Act which enacts that "When a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it." *Hadley v. Baxendale* 23 L. J. Ex. 182 and therefore under the said Sec. 73 travelling expenses cannot be recovered as damages being too remote. *Karachi Steam Roller flour mills v. Indo Continental Agency* 10 S. L. R. 118 = 39 Ind. Cas. 7.

Mode of Assessment of damages:—Where a person has suffered personal injuries on account of the negligence of another, he is entitled to damages for personal suffering and for loss of enjoyment of life and also to actual pecuniary loss resulting to, and the expenses reasonably incurred by him. If he is engaged

in a profession or trade or other occupation, he must be compensated for the probable future loss by reason of incapacity or diminished capacity to work.

In assessing damages arising from the probable loss of future income, the profits average earnings form the natural basis. *Shri Ram v. Delhi Electric Tramway & Lighting Co.* 13 P. W. R. 1919=49 Ind. Cas. 135.

Possession of railway in time of public emergency:—When His Majesty in Council declares that an emergency has arisen, the Government may take possession of the whole or any part of any railway in the United Kingdom or the plant and rolling stock of any such railway. The Company whose property is so taken possession of, is entitled to compensation which is to be determined by Arbitration Land clauses Consolidation Act 1845 (8 & 9 Vict. C. 18.) failing agreement, (Regulation of the Force's Act. 1871 (34 and 35 Vict. 86) S. 16).

In case of emergency, also, traffic for naval and military purposes may be required to be given precedence of all other traffic on railway. (National Defence Act, 1888 (51 and 52 Vict. C. 31) S. 4.

See also order in Council of the 4th August 1914 (R. & O. 1913 No. 1300 M. E. L. p. 368) declaring an emergency has arisen.

Compensation for death caused by accident.—In England there is an Act known as Lord Campbell's Act Amendment Act (27 and 28 Vic. c. 95) for compensating the families of persons killed by accident under which the wife, husband, parent or child of the person whose death shall have been so caused as therein mentioned can bring an action for damages, in India a similar provision is made by Act XIII of 1855 (An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong).

67. (1) Fares shall be deemed to be accepted, and tickets to be issued, subject to the condition of there being room available in the train for which the tickets are issued.

Provision for cases in which tickets have been issued for trains not having room available for additional passengers.

(2) A person to whom a ticket has been issued and for whom there is not room available in the train for which the ticket was issued shall, on returning the ticket within three hours after the departure of the train, be entitled to have his fare at once refunded.

(3) A person for whom there is not room available in the class of carriage for which he has purchased a ticket and who is obliged to travel in a carriage of a lower class shall be entitled on delivering up his ticket to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he travelled.

Fare:—Means the fare for the class by which the passenger travels. *Gillineham v. Walker* 44 L. T. 715. See also s. 66, p. 169.

A proper Pass or ticket:—By the words "proper pass or ticket" in this section must be understood a pass or ticket by which the person would be authorized to enter the carriage for the purpose of travelling therein as a passenger. *B. N. Ry. v. Devidatt* 9 C. P. L. R. 1 (cr.)

Travelling without having a proper pass or ticket:—A person who without the permission of a railway servant, enters any carriage, for the purpose of travelling therein as a passenger, without having with him a ticket or pass is said to be travelling without a proper pass or ticket. *In Hart v. Buskin* 12 Cal. 192, Wilson, J. was of opinion that "Travelling without a ticket, must mean travelling without having taken a ticket. A passenger who had taken a pass or ticket, but had lost the same, during the journey, would be said to be travelling without a proper pass or ticket. *Pertab Daji v. B. B. & C. I. Ry. Co.* 1 Bom. 52. See also *Reynolds, v. Beasley & Anr* (1919) 1 K. B. 215.

Permission to enter carriage without ticket—how far good:—If a passenger is allowed to enter a carriage without having taken a ticket, such permission, if it amount to leave and license to a passenger to travel in the train without a ticket could only operate until the train arrives at the next station. *Pertab Daji v. B. B. & C. I. Ry. Co.* 1 Bom. 52.

Removal of passenger from carriage:—A passenger travelling without having paid for and obtained a ticket may be treated as a trespasser and a railway company would be justified in removing him from the train. *Pertab v. B. B. & C. I. Ry.* (See Supra). In *McCarthy v. Dublin W. Ry. Co.* Ir. 5 C. L. 244 it was decided that under a by-law prohibiting a person from travelling without first paying his fare and obtaining a ticket, the company are justified in removing him from the carriage, though he offers to pay the fare. On the same principle it was held in *Scottish N. E. Ry. Co. v. Matthews* 5 Irine 237 that if a person arrives at the station too late to take a ticket and gets into the train without one, the railway company are justified in refusing to allow him to remain although he tenders payment of the fare.

Tickets available on day of issue:—Tickets are only available on the day of issue and therefore if a ticket is not so availed of, it is not a proper ticket within the meaning of S. 68. *Veeraraghavachari v. French.* 1 Weir 870.

69. Every passenger by railway shall, on the requisition of any railway servant appointed by the railway administration in this behalf, present his pass or ticket to the railway servant for examination, and at or near the end of the journey for which the pass or ticket was issued, or, in the case of a season pass or ticket, at the expiration of the period for which it is current, deliver up the pass or ticket to the railway servant.

Production of season pass or ticket:—It has been held both in England and in India that holders of season tickets for travelling on the line are bound to

Exhibition and
surrender of passes
and tickets.

produce their tickets to the railway officers as much as ordinary passengers, *Woodward v. E. C. Ry. Co.* 30 L. J. (N. S.) M. C. 196, *Hart v. Bushin* 12 Cal. 192; A railway company in order to enforce a by-law as to the production of tickets must bring themselves strictly within the terms of such a by-law. *Jennings v. G. N. Ry. Co.* 35 L. J. Q. B. 15, L. R. 1 Q. B. 7.

Season tickets—condition precedent to right to recover deposit.—The Plaintiff bought from the defendant company a season ticket entitling him to travel by their railway for one month, paying the usual charge for such a ticket and 10 s. deposit and agreed to be bound by certain conditions. The fourth condition was, the ticket "is to be considered as the property of the company, to be delivered up at the Secretary's office, on the day after expiry or on forfeiture." The sixth condition was "That the ticket and all benefit and advantages thereof, including the deposit, shall be absolutely forfeited to the company, if it shall be lost or in case of any breach of any of the above conditions." Some few days after the expiry of the month, but within a reasonable time, the plaintiff delivered up the ticket and claimed the deposit; and on the company's refusal brought an action to recover it:—Held that the performance of every one of the conditions was a *condition precedent to the right to a return of the deposit*, and that as the ticket had not been delivered up "on the day after expiry" the conditions had not been performed the deposit was forfeited and the plaintiff could not maintain the action. *Cooper v. L. B. & S. C. Ry. Co.* 48 L. J. Ex. 434; 40 L. T. 324. In the same way in India any periodical ticket holder will lose his deposit given at the time of the issue of such a ticket in case he fails to observe the conditions given in rule 62 (9, 10) of the Railway Coaching Tariff Part I. Rule 62 (9, 10 & 11) can, with advantage be referred to here. 62 (9) periodical tickets must be *renewed* within 3 days of the date of their expiry otherwise the amount deposited will be forfeited to the company. * * * 62 (10) Periodical tickets which are not to be renewed, must be given up not later than the day following the date of expiry, failing this the amount so deposited will be forfeited to the company. Sunday will be a *dies non*. 62 (11) * * * In the case of tickets being lost or mislaid, fresh tickets will only be issued on payment of full charges and fresh deposits. *Byranji Lentin v. B. B. & C. I. Ry.* (19-9-1903) Bom. H. ct.

Failure to produce a ticket—removal from carriage not justified.—The plaintiff was a passenger by the defendants' railway. The ticket issued to him incorporated by reference certain conditions published in the defendants' time tables, one of which was that every passenger should show and deliver up his ticket to any duly authorised servant of the company, when required to do so for any purpose, and any passenger travelling without a ticket or failing or to show or deliver up such ticket as aforesaid, should be required to from the station whence the train originally started. The plaintiff's ticket was unable to produce it when required to do so during the of the defendants' servants. The plaintiff was thereupon

from the station whence the train had started, and on his declining to do so, was forcibly removed by the defendants' servants from the carriage in which he was travelling, no more force, however, was used than was necessary for his removal. He thereupon sued the defendants for assault:—Held that the contract between plff. and the defts. did not by implication authorize the defts. to remove the plff. from the carriage on his failing to produce a ticket and refusing to pay the fare as provided by the condition; that the defts. were not justified in so removing him; and that the action was therefore maintainable. *Butler v. M. S. & L. Ry. Co.* 57 L. J. Q. B. 364; 21 Q. B. D. 207.—contra *McCarty v. D. W. Ry. Co.* 18 W. B. R. 762.

Failure to produce ticket—Detention not justified:—A passenger who, having failed to produce his ticket or to pay his fare, gives his correct name and address, *cannot be detained* by a company, pending inquiry as to the correctness of the information, although his conduct is such as to give reasonable and probable cause for the belief that such information is false. *Knights v. L. C. & D. Ry. Co.* 62 L. J. Q. B. 378.

By a bye-law of a railway company any passenger not producing or delivering up his ticket will be required to pay the fare from the most distant place &c. and shall pay * * * :—Held, that the company were not justified in *detaining* a passenger for the purpose of making the demand. *Talmage v. L. & S. W. Ry. Co.* 4 W. R. 234; see also *Brown v. G. E. Ry. Co.* 46 L. J. M. C. 231; 2 Q. B. D. 406; but see the remarks of Cockburn C. J. in *Saunders v. S. E. Ry. Co.* 49 L. J. Q. B. 761; 5 Q. B. D. 456.

Taking of servants' tickets by a master.—Where a master took tickets for himself and his three servants, keeping the tickets in his own care, but telling the guard that he had the servants' tickets, and the servants were allowed to enter the train:—Held, that the company was estopped from pleading in an action for trespass that they had not paid their fare. *Jennings v. G. N. Ry. Co.* 35 L. J. Q. B. 15.

As to penalty for non-compliance with the provisions of this section. See S. 113.

70. A return ticket or season ticket shall not be transferable and may be used only by the person for whose journey to and from the places specified thereon it was issued.

Return and season tickets.

Sale or transfer of single tickets not prohibited:—Secs. 70 and 114 of the Railway Act (1890) being applicable only to return and season tickets, the sale or transfer of single tickets is neither prohibited nor rendered penal by the Act.

Where the accused bought a number of tickets during a festival and sold one of them at a rate higher than that for which he had bought it, and the purchaser was aware of the higher of the above rate and was not misled, it was held that the accused was not guilty of cheating. In *Rama Swami Naidu*, Weir Reports 872.

Travelling with not transferable ticket:—The respondent who was travelling on the G. W. Ry., in a train going to N. produced the "forward half" of a tourist return ticket from L. to N. and back. This ticket had been originally issued to another person and was stated on the back thereof to be not transferable. The original taker had used the ticket as far as H on the way from L. to N. and then proceeded on a different route, and consequently not having given up the forward half of the ticket, sold it to the respondent who was travelling with it between H. & N.—Held, that the respondent was liable to be convicted for travelling without having previously paid his fare with intent to avoid payment thereof *Langdon v. Howells* 48 L. J. M. C. 113. *Reynolds v. Bausley* (1919) 1 K. B. 215. (travelling with a work-man's ticket marked "not transferable").

Right to break journey:—A contract by a railway company to carry passengers from one station to another, does not in the absence of special terms, entitle the passenger to break journey at any intermediate station. *Aston v. L. & Y. Ry. Co.* (1904) 2 K. B. 313.

Return ticket entitles passenger to travel to & from the station named in the ticket.—A railway return ticket only entitles the passenger to travel to and from the stations named in the ticket. If the passenger goes beyond the station named, to another station, he must pay the additional fare, even though the price of a return ticket from the departure station to the further station be the same. A took a return ticket from W. to D. but on the return journey, he did not alight at W, but went on to P:—Held that A was liable for the fare between W. & P. on the return journey, notwithstanding that the price of a return ticket from W. to D. and W. to P. was the same. *G. W. Ry. Co. v. Pocock* 41 L. T. 415.

71. (1). A railway administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (1), clause (d), a person suffering from any infectious, or contagious disorder.

(2). A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the station-master or other railway servant in charge of the place where he enters upon the railway.

(3). A railway servant giving such permission as is mentioned in sub-section (2) must arrange for the separation of the person suffering from the disorder from other persons being or travelling upon the railway.

What diseases are deemed to be infectious or contagious disorders:—For the purposes of the Indian Railways Act, 1890, the following shall be deemed to be infectious or contagious disorders, namely:—

(1) Bubonic fever, (2) Cholera, (3) Diphtheria, (4) Leprosy, (5) Measles, (6) Scarlet fever, (7) Small-pox, (8) Typhus fever, (9) Typhoid fever, and (10) Whooping cough—See G. R. R. Part II r, 7 p. 147.

Conditions on which passengers suffering from infectious or contagious disorders may be carried:—No passengers suffering from an infectious or contagious disorder shall be carried in any train unless,—

(a). He has engaged a reserved compartment for himself and his attendants; and,

(b). All necessary agreements have been made in pursuance of this section (71 of Act IX of 1890), for the separation of the passenger and his attendants, during the whole time that they remain upon the railway, from other persons being or travelling upon the railway, and

(c). Any other special precautions which the railway servant, giving the permission mentioned in the said section, may consider necessary, have been taken to prevent infection or contagion being communicated to other persons being or travelling upon the railway.—See G. R. R. Part II Ch. II r. 8 p. 148.

Passenger suffering from disorder travelling without permission:—Where K knowing that he was suffering from cholera travelled by a train, without informing the railway officers of his condition and M. knowing K's condition purchased his ticket & travelled with him, it was held that K was properly convicted under sec. 269 I. P. C. because he must have known that he was doing an act likely to spread infection and he did so negligently in not informing the railway authorities and that M was guilty of abatement of K's offence. *Emp. v. Krishnappa* 7 Mad. 276

Penalty—Penalty for violating the provisions of sub-section 2 of this section see S. 117.

CHAPTER VII.

RESPONSIBILITY OF RAILWAY ADMINISTRATIONS AS CARRIERS.

72. (1) The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872.

Measure of the general responsibility of a railway administration as a carrier of animals and goods.
IX of 1872.

(2) An agreement purporting to limit that responsibility shall, in so far as it purports to effect such limitation, be void, unless it—

(a) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and

(b) is otherwise in a form approved by the Governor-General in Council.

(3) Nothing in the common law of England or in the Carriers Act, 1865, regarding responsibility of common carriers with respect to the carriage of animals or goods shall affect the responsibility as in this section defined of a railway administration.

Object of the section—Injury caused by gross negligence.—Under this section, notwithstanding any contract or notice the Railway Company shall always be liable for any loss caused by gross neglect or misconduct. In effect, it restrains the company from limiting their liability with regard to ordinary goods beyond gross negligence and misconduct, they, however, may with the consent of the Government limit their liability for their loss arising from other reasons than gross neglect. *Per Peacock C. J.* in *E. I. Ry. Co. v. Jordan*, 4 B. L. R. 97 (O. C.)

Under the common law, a carrier might by special contract, protect himself even against loss or injury occasioned by the gross negligence of himself or his agents. *Austin v. The Manchester S. & L. Ry. Co.* 16 Q. B. 30; *Chippendale v. The L. & Y. Ry. Co.* 21 L. J. Q. B. 22; *Surutram v. G. I. P. Ry. Co.* 3 Bom. 96 at p. 105; *Peak v. North Staffordshire Ry. Co.* 10 11. L. C. 473

What is loss, destruction, &c.—The words "loss, destruction, &c.", in S. 75 (1) include loss caused by the criminal misappropriation of the parcel by a servant of the Railway Administration in charge thereof.—*Balaram v. S. M. Ry. Co.* 19 Bom. 159; *Venkatachala v. S. I. Ry. Co.* 5 Mad. 203; *Bradly v. Waterhouse* 3 C. & P. 318. A loss of goods by the theft of a railway company's servant, without negligence on the part of the company was held not to be a loss "occasioned by the neglect or default of the company or its servant" within the meaning of S. 7 of the Railway and Canal Traffic Act 1854. *Shaw v. G. W. Ry. Co.* (1894) 1 Q. B. 373, 42 W. R. 285.

"Loss" in the English Carriers' Act of 1830 S. 1 means a loss by the carrier, such as by abstraction by a stranger or by his own servants not feloniously, or by losing them from vehicles in the course of carriage, or by mislaying them, so as not to know where to find them, and the like; it includes temporary as well as permanent loss. *Hearn v. L. & S. W. Ry. Co.* 24 L. J. Ex. 110; 10 Ex. 793, *S. M. Ry. Co. v. Govindrao* 21 Mad. 172. It also has been held to include "loss of market on account of unreasonable delay. *Wilson v. L. & Y. Ry. Co.* 30 L. J. C. P. 232; 9 C. B. (N. S.) 632, *M. S. & L. Ry. Co. v. Brown* L. R. 8 App. Cas. 703, *O'Haultan v. G. W. Ry. Co.* 34 L. J. Q. B. 154; *Collard v. S. E. Ry. Co.* 30 L. J. Ex. 393; *Simpson v. L. & N. W. Ry. Co.* 45 L. J. Q. B. 182; 1 Q. B. D. 247; a temporary loss owing to delivery to a wrong person *Millen v. Brasch* 10 Q. B. D. (C. A.) 142; 52 L. J. Q. B. (App.) 127; loss by misdelivery *Hill Sawyer & Co. v. Secy of State* (1921) 2 Lahore 133; 61 Ind. Cas. 526; *M. & S. M. Ry. Co. v. Haridas*

41 Mad. 871. It also includes cases when the article consigned is lost to the consignor as such article or has lost its identity as such. *M. & S. M. Ry. Co. v. Muttai Subba Rao* 43 Mad. 617; loss by exchange *Imamkhan v. Nizam G. S. Ry.* (1905) See, s. c. et. loss by forwarding the goods otherwise than agreed upon *Sleat v. Fagg* 5. B & A 312; or to deviation from the usual route *Davies v. Garrett* 6 Bing 716 or the same being negligently carried beyond the place of their destination, *Bodenham v. Bennett* 4 Price 41; *Ellis v. Turner* 8 T. R. 531; *Morritt v. N. E. R. Co.* 1 Q. B. D. 302; 45 L. J. Q. B. D. 289.

The Bombay and Calcutta High Courts have held that if the outer cover which encloses a parcel is delivered, the article cannot be said to have been lost by the company; but it seems that it is too narrow a construction upon the expression "loss". The term *loss* should be construed as including cases where the article consigned is lost to the consignor as such article. If the goods entrusted to the care of the company ceases to have any resemblance to the goods of the description which they undertook to carry, the company should be held to have lost the goods. In *Asfar & Co. v. Blundell* and *Clogan v. London Assurance Co.* 5 M. & S. 447; Lord Esher gave this meaning of the word "loss". The nature of a thing is not necessarily altered because the thing itself has been damaged; wheat or rice may be damaged, but may still remain the things dealt with as wheat or rice in business; But if the nature of the thing is altered and it becomes for business purposes something else, so that it is not dealt with by business people as the thing which it originally was, the question for determination is, whether the thing insured, the original article of commerce, has become a total loss. If it is so changed in its nature, as to become an unmerchable thing, which no buyer would buy and no honest seller would sell, then there is a total loss. In *Hearn v. London & S. W. Ry. Co.* (Supra), Baron Park has expressed himself to the same effect; and therefore if it is proved that the article has lost its identity as such it would amount to loss. *M. & S. M. Ry. Co. v. Muttai Subba Rao* (1920) 55 Ind. Cas. 754; 38 Mad. L. J. 360; (1920) Mad. W. N. 198; 43 Mad. 360. (*E. I. Ry. Co. v. Nilkanth Roy*. 41 Cal. 576 & *B. B. & C. I. Ry. v. Ambulal* Ind. Ry. Cas. 48 dissented from). See also notes on the word "loss" in Ss. 75 & 77.

What is deterioration:—The word "deterioration" is wide enough to cover a falling off in the value of the goods due to their not having been delivered in time, Per Benson J. in *Mad. Ry. Co. v. Govind Rao* 21 Mad. 172, it imports the becoming reduced either in quality or in value.—Per Subramaniya Aiyar J. (*Ibid*) p. 175; *Wilson v. L. & Y. Ry. Co.* 30 L. J. C. P. 232.

The word "deterioration" includes injury or damage to cattle, due to the negligence of a carrier in not supplying them with food and water. *Allday v. G. W. Ry. Co.* 34 L. J. Q. B. 5; but not damage which can be attributed to the development of a latent inherent vice in the animal itself, such as its violence or want of temper. *Blower v. G. W. Ry. Co.* L. R. 7 C. P. 655; 41 L. J. C. P. 268, (bullock breaking

loose from the ordinary restraints by its own special violence, the escape was attributable to the efforts and exertions of the animal itself; *Kendall v. L. & S. W. Ry. Co.* L. R. 7 Ex. 373; 41 L. J. Ex. 184. (In this case the horse was the immediate cause of its own injuries; that is to say, it slipped or fell or kicked or plunged or in some way hurt itself. It means that the loss was due to its inherent propensities), or in the case of goods, loss arising from the ordinary wear and tear and chafing of the goods in the course of transportation or from their ordinary loss, deterioration in quantity or quality in the course of the transit. (For example loss due to ordinary diminution or evaporation of liquids, or the ordinary breakage of the casks containing liquors, in the course of transit or from their acidity or tendency to effervescence or from the ordinary decay of fruits in the course of their journey, but the carrier is bound to take reasonable care of such goods and if they require to be aired or ventilated he must take proper methods for this purpose. *Davidson v. Gwynne* 12 East 381), or from their inherent natural infirmity and tendency to damage (for example a pipe of wine, upon the ferment, bursting in the wagon when gently driven; the carrier is not liable for, the fault is in the thing itself. *Farrar v. Adams Bull. N. P.* 69) or from negligence or fraud on the part of the owner or consignor. *Blower v. G. W. Ry. Co.* L. R. 7 C. P. 655; 41 L. J. C. P. 258. *Hutchinson v. Guyon* 28 L. J. C. P. 63; *Lister v. L. & Y. Ry. Co.* (1903) 1 C. B. 878; *Hawkes v. Smith Car & M.* 72; *Baldwin v. L. & C. D. Rys.* 9 Q. B. D. 582, but only such deterioration as is caused by the default of the railway. *Wilson v. L. & Y. Ry. Co.* 30 L. J. C. P. 232; *Gill v. M. S. & L. Ry. Co.* L. R. 8 Q. B. 186.

What is delivery:—how effected:—The word "delivered" in S. 72 refers merely to a physical event and is a word devoid of any legal significance, and it has the effect of passing the property from the physical custody of one man to the physical custody of another. *Jalamsingh v. Sec. of State for India* 31 Cal. 951; See also Ss. 90 & 92. Indian Contract Act.

S. 72 of the Railways Act, which defines the responsibility of a railway Co. entrusted with goods as that of a bailee as laid down in Ss. 151, 152 & 161 of the contract Act, involves the definition of delivery as contained in S. 149 of the contract Act, and two sections 148 & 149 of that Act are equally incorporated with the Railways Act and define and control the liability of the Railway Co. *Sohanlal v. E. I. Ry.* (1922) 22. All L. J. 31.

If any person wishes to hold the railway administration responsible for the loss of goods entrusted to them, he must first of all, prove that he did in fact deliver the goods to them, and that the company did in fact accept the goods. Delivery to a company is effected by delivery to a servant or agent authorized to accept delivery. Merely leaving the goods in the yard where the carrier sets out is not delivery to him. If a parcel or package be delivered to a servant who is not authorized to receive it, the company are not liable, but if he has authority to receive it, delivery to and acceptance by such a servant or agent will be consi-

dered to be a good delivery to the company. It must be in conformity with the known course of the business of the company as carriers. *Slim v. G. N. Ry. Co.* 14 C. B. 647; *Selway v. Holloway* 1 Ld. Raym 46 *Ramchandra v. G. I. P. Ry.* 39 Bom. 485, 29 Ind. Cas. 545; *Sohanlal v. E. I. Ry. Co.* 44 All. 218; *Narsing Girji Manuf. Co. v. G. I. P. Ry.* (1919) 51 Ind. Cas. 309.

The general rule is that if goods are delivered at the company's office intended for receiving goods and there accepted by a servant of the company, the delivery is complete, so also where a company recognizes a particular place as a place for receiving goods, they will be held responsible for goods delivered at that place from the time they are so delivered. So also if a company allows any person to receive goods on their behalf they will be held liable for them from the time they are delivered to that person even though he may not be paid for doing that work. *Buckman v. Levi* 3 Camp 414; *Colepepper v. Good* 5 Car & P. 380. *Upston v. Shirk* 2 Car & P. 598; *Lovett v. Hobbs* 2 Show 127; *Leigh v. Smith* 1 Car & P. 640; *Burrell v. North* 2 Car & K. 680; *Selway v. Holloway* (Supra).

If goods are delivered to A under a contract that the owner should go with them and take care of them, that is not delivery of the goods to A as a common carrier. *Brind v. Dale* 2 M. & Rob 80.

A Condition printed on the forms of the "Goods Consignment Note," "Goods Railway Receipt" and "Goods Parcel Receipt" That the Railway ^{administration} _{Company} will not be accountable for any articles unless the same are booked and a receipt for them given by their clerk or agent, and that when the articles are accepted for conveyance, the responsibility of the railway for the loss, destruction, or deterioration of the articles would be governed by the provisions of sec. 72 of the Indian Railways Act 1890. Such a condition has been held to be inconsistent with the Act and unreasonable and the company will be held liable to pay compensation for the loss incurred. *Ramchandra v. G. I. P. Ry.* 39 Bom. 485 = 17 Bom. L. R. 496; *Jalini Singh v. The Secretary of State* 31 Cal. 951; *Narsing Girji Manufacturing Co. v. G. I. P. Ry.* 21 Bom. L. R. 406; 51 Ind. Cas. 309; *Sohanlal v. E. I. Ry.* (1922) 44 All 218, 22 All L. J. 31 (dissenting *Banatal v. The Secretary of State* 23 All. 367).

Issue of railway receipt not necessary to complete delivery:—The commencement of the liability of the company, for goods delivered to be carried under Section 72 is in no way depend upon the fact of a receipt having been granted and must be determined on the evidence in the case quite independently of a rule made under section 47 cl. (1) sub cl. (f) *Ramchandra Natha v. G. I. P. Ry.* (1915) 17 Bom. L. R. 496 at p. P. 504 = 39 Bom. 485 = 29 L. C. 545. *Sohanlal v. E. I. Ry.* (Supra).

What is a delivery by a Railway:—A delivery of the goods to the owner or consignee or to his agent duly authorised is a sufficient delivery. *Coombs v. Bristol & Exeter Ry. Co.* 3 H & N. 1.

According to the conditions printed on the back of the Railway Receipts which are approved of and sanctioned by the Govt. of India Circular No. 9 of 14-5-1895 the signature of the consignee or his agent in the delivery book at destination shall be evidence of complete delivery.

Delivery to consignee on clear receipt:—The grant by the consignee of a clear receipt for goods delivered by a railway Co. and acceptance of delivery by him do not affect the right to compensation for loss or damage actually proved to have been caused to the goods while in the custody of the company, such a receipt only raises a presumption that the alleged loss has not taken place but the presumption may be rebutted by the consignee. *E. I. Ry. Co. vs. Sisupal* 16 Cal. W. N. 329 = 39 Cal. 311 = 14 Cal. L. J. 472.

Acceptance of the goods by the consignee without objection and with knowledge of their defective condition precludes recovery for damages thereto (6 Martin N. S. (la) 58 (1827); *Mery v. Warner* (17 La. Ann. 34 (1865) yet acceptance will not operate as a waiver of objection for damage not apparent. In *Mairs v. New York Ry. Co.* 56 L. R. A. 884 (1902) a piano was delivered by the carrier to the consignee who signed a clear receipt; when the package was taken home and opened it was discovered that the piano had been spoiled by water. It was held that the consignee was entitled to damages notwithstanding the grant of a clear receipt and acceptance of delivery. *Per Curdus J.*:—A bailor who, in the absence of any agreement on the subject, has given the bailee a receipt for the goods bailed, is not, ipso facto, precluded from proving that the goods were in reality damaged or deficient in quantity when delivered to him 39 Cal. 311. (supra) *Ranjash v. I. G. N. Ry. Co. Ltd.* 22 Cal. W. N. 310.

After the delivery of the goods by railway e. g. by signing the delivery book they come to be not merely in the potential possession of the consignee but actually within his power and unrestricted control. It is open to him to do as he likes with the goods. He can remove them without let or hindrance to any place where-soever he might wish them to be carried, the possession of the Ry. company having from the moment of the delivery ceased and that of the consignee having commenced. *Siddhur v. Emp.* 40 Cal. 990.

Delivered to the railway administration to be carried by them:—S. 72 refers to responsibility of railways with reference to carriage of goods and animals and therefore the provisions of this section would only apply in cases where they are delivered to them for carriage; but if they are received by the administration as a warehouseman or in some such capacity, the provisions of this section would have no application. The liability of the administration would then be of a mere warehouseman or bailee for hire and the provisions of chapter IX of the Indian Contract Act would apply. According to S. 7 of the Railway and Canal Traffic Act 1854, leaving of luggage in a clock-room after the completion of the railway journey does not come within the meaning of the words receiving, f. 221

or delivering." *Mahomed v. Sec. of State for India*, Punj. C. C. (1897); 36 P. R. 1897; *Van Toll v. S. E. Ry. Co.* 31 L. J. C. P. 241.

The delivery contemplated by this section is an actual delivery and marks the beginning of the Co's responsibility.

The expression "*Goods delivered to be carried by railway*" in Sec. 72 must be read literally and according to its natural meaning. It means something more than a mere depositing of goods on the railway premises; it means some sort of acceptance by the railway, a taking as well as giving. When the taking occurs is a matter which depends on the course of business, and the facts of each particular case; but it certainly may be completed before a railway receipt is granted *Ramchandra Natha v. G. I. P. Ry. Co.* (1915) 17 Bom. L. R. 496 at pp. 500, 502; 39 Bom. 485, 29 Ind. Cas. 545.

The mere fact that the particular branch of the Railway Administration which is concerned with the loading of the goods upon trucks has not yet handled the goods cannot affect the question whether the goods have been delivered by the consignor to be carried. The goods were "delivered to be carried" as soon as they were taken into the *Goods forwarding shed* and that the delivery was the delivery of the consignor and his intention was to be considered:—*Narsing Giri v. G. I. P. Ry.* (1919) 51 Ind. cas. 309

Luggage on its way to or from the carriage.—Where luggage is entrusted to a porter to be placed in the railway carriage with the passenger and is lost before it is placed in the carriage the company is liable if the circumstances are such as to show that the luggage was entrusted to the porter for the purpose of the transit and not to be taken charge of while the journey was suspended. *Bunch v. G. W. Ry. Co.* 17 Q. B. D. 215, *Welch v. L. & N. W. Ry. Co.* 34 W. R. 166.

Luggage handed over to a porter while the passenger having to wait three quarters of an hour for connecting train went to refreshment room on the station premises on his way from the one platform to the other, held that the company were liable for the loss of his luggage. *Fitton v. L. & Y. Ry. Co.* (1914) 3 L. J. (c. c.) 68.

The same rule applies if at the other end of the Journey, luggage carried with the passenger is given to a porter to be taken to a cab and lost on the way. *Richards v. L. B. & S. Ry. Co.* 7 C. B. 839; *Butcher v. L. & S. W. Ry. Co.* 16 C. B. 13 *Leach v. S. E. Ry. Co.* 34 L. T. 134. See *Bunch v. G. W. Ry. Co.* 17 Q. B. D. 215.

When liability of a carrier is merged in that of a warehouseman.—When once the consignee is *in mora* by delaying to take away the goods beyond a reasonable time, the obligation of the carrier becomes that of an ordinary bailee being confined to taking proper care of the goods as a warehouseman; and he ceases to be liable in case of accident, such as loss by fire. *Chapman v. G. W. Ry. Co.* 5 Q. B. D. 281. *Shepherd v. Bristol & Exeter Ry. Co.* 3 Ex. 189; *Coggs v. Bernard* 1 Smith L. C. 188. What will amount to a reasonable time is sometimes a matter of difficulty as a question of fact and not of law.

Plaintiff sued the railway company for damages for injury to gunny bags consigned to him from S, he having refused to accept delivery on the ground that they had been damaged owing to want of proper care on the part of the company. The Lower Appellate Court held that the liability of the depts. as carriers ceased at 10 A. M., on the morning of the 17th June, 24 hours after the arrival of the last three bags. The damage being admitted to have taken place on the night of the 17th. Held:—Accepting the finding of the Lower Appellate Court that the goods were ready for delivery 24 hours before 10 A. M., on the 17th June, and that a reasonable time having then elapsed, the responsibility of the company as carriers ceased; that when that responsibility came to an end, they became responsible as ware-houseman, their responsibility in that capacity being regulated by sec. 151 of the Ind. Contract Act. *Chetram v. Agent S. P. & D. Ry. Co.* P. R. 92 of 1883 (Civil).

Warranty of safety of warehouse:—There is no warranty on the part of the ware-houseman, that the place where the goods are kept are absolutely safe. *Searle v. Laverick* L. R. 9 Q. B. 122

Origin of the liability of common carriers—The obligation imposed by law on common carriers has nothing to do with contract in its origin, but it is a duty cast upon common carriers by reason of their exercising a public employment for reward and a breach of such duty is a breach of the law and for this breach an action lies founded on the common law, which action wants not the aid of a contract to support it.

A carrier by water impliedly engages that his vessel shall be water-tight, *Maladi Sathalingam v. Ramjam Lalji* 14 Bur. L. R. 77.

Commencement and duration of liability as carrier—After the arrival of the goods at destination, it is the duty of the consignee to remove them within a reasonable time. After that the company ceases to be a carrier and incurs from that time, a liability as a bailee. The extent of his liability will depend upon the character in which he holds the goods at the time of the loss. If they are received into his warehouse to await the future orders of the owner or consignor as to their destination, he is clothed only with the ordinary duties and responsibilities of a ware-houseman or bailee for hire. *Cairns v. Robins* 10 L. J. Ex. 452; 8 M. & W. 258; *Bourne v. Catliff* 8 Scot. N. R. 604; *Shepherd v. Bristol & Exeter Ry. Co.* (Ibid); *Bartlett v. L. & N. W. Ry. Co.* 3 Jur. N. S. 58; *Reath v. Lon. Tilbury & Southend Ry. Co.* (1912) 47 L. J. 649. *E. I. Ry. v. Inderman* (1922) 22 All. L. J. 114; 65 Ind. Cas. 771.

Subject to the other provisions of this Act:—As regards limiting the responsibility of railway administration subject to the other provisions of this Act See Sec. 54 (Imposing conditions for working traffic), S. 56 (Disposal of unclaimed things), S. 57 (Requiring indemnity on delivery of goods in certain cases), S. 58 (requisitions for written accounts of description of goods), S. 59 (giving notice of dangerous or offensive goods), S. 73 (liability of railway as a carrier of

animals), S. 74 (liability as a carrier of luggage), S. 75 (liability as a carrier of articles of special value), S. 78 (exoneration from responsibility in case of goods falsely described), S. 82 (limitation of liability of railway in respect of accidents at sea).

Responsibility of Railway Administration as a bailee,

(a) **Bailment**.—A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment—S. 148 of the Contract Act IX of 1872.

The main characteristics of a bailment is that the delivery contemplated is for a temporary purpose and that when that purpose is accomplished the identical article is to be returned or otherwise disposed of according to the bailor's directions.

(b) **Delivery to bailee how made**.—The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. (S. 149 of Act IX 1872. (See Sec. 90 and illustrations of the same Act of 1872).

(c) **Care to be taken by bailee**.—In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence, would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. *Surendra v. Secy of State* 25 Cal. L. J. 37; *Mulji v. Junagadh State Ry.* 25 K. L. R. 257; *B. B. & C. I. Ry. v. Venishanker* 25 K. L. R. 221. See also s. 151 of Act IX of 1872.

For a similar provision See Sec. 15 of the Indian Trusts Act II of 1882.

When goods which have been entrusted to bailees for hire are lost, it lies on the bailees to show that they have taken as much care of the goods as a man of ordinary prudence would, under similar circumstances, have taken of his own goods of a similar kind, and that the loss occurred notwithstanding such care. If they fail to satisfy the court on the point, they are liable for the loss. *Trustees of the Harbour of Madras v. Best & Co.* 22 Mad 524. On this principle the deft. company were held liable in *Choutmall v. The River Steam Navigation Co.* 24 Cal. 788 because in this case the facts showed that no adequate means had been provided, by the deft. company for extinguishing a fire on board, and that the watch was insufficient, and thus the company failed to take that degree of care which the law required of them. This decision was upheld in appeal by the Privy Council.

in 26 Cal. 398; *Nankaram v. Ind. Mid. Ry. Co.* 22 All. 361. *Lakhchand v. G. I. P. Ry.* 14 Bom. L. R. 165 = 37 Bom. 1. In a suit against an ordinary bailee, the limits of whose responsibility are defined in secs. 151 and 152 of the contract Act, for not taking care of the goods and saving them from loss, e. g. loss by fire, the bailee should in accordance with the provisions of S. 106 of the Evidence Act, call all the material witnesses who were on the spot at the time of the loss, but that section of the Evidence Act does not discharge the plff. from proving want of due diligence or (expressing it otherwise) the negligence on the part of the bailee or his servants. *Dwarkanath, R. Choudhuri v. River S. N. Co. Ltd.* 27 Cal. L. J. 615; 20 Bom. L. R. 735.

The obligation of a railway company towards the consignor of goods includes not only the duty of taking all reasonable precautions to obviate risks, but the duty of taking all proper measures for the protection of the goods when the risk has actually occurred. *Lakhchand v. G. I. P. Ry.* (supra) followed in *Hirji Khetsi v. B. B. & C. I. Ry.* 16 Bom. L. R. 467.

"The court has, in dealing with cases under this section, to determine what a man of ordinary prudence would have done with his own goods under the circumstances. It must, therefore, take into consideration the state of society, the general usages of life, and the danger peculiar to the times, as well as the apparent nature of the object of bailment and the degree of care which it seems to require. The fact that the bailee's goods were lost at the same time is not a sufficient ground for acquitting him of negligence with regard to bailor's goods", *Lakshmidas v. Babu Megh Raj* P. R. 90 of 1990; *Doorman v Jenkins* 2 A. & E. 256. A bailee does not generally warrant the safety of goods placed in his charge and if he takes proper measures to secure them, he is not responsible, because they are damaged by circumstances over which he had no control. *Govind Sahai v. Ranjidas* P. R. 63 of 1876. On the same principle it has been held that the obligation of the carrier of passengers does not extend so far as to make the carrier responsible for a latent defect which he could not by proper care have prevented or detected. *Readhead v. Mid Ry. Co.* L. R. 4 Q. B. 379.

If animals are left on a company's hands at destination, it is their duty to act reasonably according to the circumstances of the case in providing for the safety of the animals. Failure to perform this duty would be negligence and for this negligence the company would be responsible unless protected by some special contract. *Arratoon v. E. I. Ry.* (1917) 38 Ind. Cas. 143 (four hens put in a van which was closed on all sides and owing to the heat they suffered in the van, they died in transit). Therefore in order to avoid this liability, they should supply animals with all that is necessary to maintain their condition. On the other hand, if a bailor or consignee omits or refuses to take his goods at a proper time from a carrier who is ready and willing to deliver them he may be liable to compensate the bailee for any necessary expenses of and incidental to their safe custody *G. N. Ry. Co. v. Swaffield* L. R. 9 Ex. 132; 43 L. J. Ex.

89; *Curran v. Mid. G. W. Ry. Co. of Ireland* 2 Ir. R. 183; *Giles v. Taff Vale Ry. Co.* 23 L. J. Q. B. 43, *Smith v. G. W. Ry. Co.* (1921) 2 K. B. 237.

(d) **Amount of care necessary in cases of sudden emergency:**—Good sense and policy of the law impose some limit upon the amount of care, skill and nerve which are required of a person in a position of duty, who has to encounter a sudden emergency. In a moment of peril and difficulty, the court should not expect perfect presence of mind, accurate judgment and promptitude. If a man is suddenly put in an extremely difficult position and a wrong order is given by him it ought not in the circumstances to be attributed to him as a thing done with such want of nerve and skill as to amount to negligence. If in a sudden emergency, a man does something which he might, as he knew the circumstances, reasonably think proper, he is not to be held guilty of negligence, because, upon review of the facts, it can be seen that the course he had adopted was not in fact the best. *Diwarkanath R. Chowdhury v. River S. N. Co. Ltd.* 27 Cal. L. J. 615; 20 Bom. L. R. 735; *The Bywell Castle* L. R. 4 P. D. 219 approved.

(e) **Bailee when not liable for loss &c. of things bailed:**—The bailee in the absence any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed, if he has taken the amount of care of it described in Sec. 151 & S. 152 of Act IX of 1872.

(f) **Bailee's responsibility when goods are not duly delivered or tendered:**—If by the fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. (S. 161 of Act IX of 1872).

(g) **No protection to company if goods are wrongfully detained:**—Where a railway company exercises the powers given to it by Section 55 of the Railway Act illegally or wrongfully, it is liable for illegal or wrongful detention and is not protected by S. 72 of the Railway Act or S. 161 of the Indian Contract Act. *E. I. Ry. Co. v. Shoratan Das* 11 A. L. J. 335.

(h) **Liability of railway company as bailee-negligence-onus:**—When a person has entrusted goods to a Ry. Co., for carriage and those goods are lost, damaged or destroyed while in the possession and under the control of the railway, the fact of the loss, damage or destruction is enough to cast upon the company the burden of proving that loss was not due to any negligence on its part. The standard of negligence is given in Ss. 151 and 152 of the Ind. Con. Act, but no general rule universally applicable can be laid down as a rule of law defining the amount and quality of the proof in every case which will discharge the Ry. Co.'s onus, but it is for them to establish positively that, they had discharged the statutory duty which is defined in S. 72 of the Rys. Act. read with Ss. 151 & 152 of the Contract Act. *Secy of State for O. & R. Ry. v. Afzal Husein* 56 Ind. cas. 714. A railway Co., when sued for loss of goods entrusted to it for carriage may exonerate itself by proof of general care in dealing with large quantities of similar

goods and proving that, that amount of care is usually sufficient to prevent loss, damage or destruction. *Sarendra Lal Choudhary v. Secy. of State* 21 Cal. W. N. 1125; (*Lakhchand v. G. I. P. Ry.* 37 Bom. 1, 11 Bom. L. R. 165 followed);—

A decree, however, ought not to be given against a railway company, sued as bailee for loss, damage or destruction of goods bailed to it, the moment it admits that it is unable to assign the *Vera Causa* of the loss.

A Railway Co., is as bailee primarily liable for the loss by fire of goods entrusted to it for conveyance; but it may exonerate itself in two ways. It may, while ignorant of the cause of the fire, show, if it can, that that could not possibly be attributable to itself, that in other words, it was altogether external and beyond the company's control. *Secondly*, the bailee while ignorant of the *Vera Causa* might point to the fact that he had taken such precautions against risk and dealt with the goods entrusted to him with such care that whatever the cause might be and although attributable to his own act, yet it must be presumed to have been of such an uncommon or of such an unpreventible kind that it ought to be held responsible. *Hirji Khetsi & Co. v. B. B. & C. I. Ry. Co.* (1911) 16 Bom. L. R. 167.

Liability of common carriers and railways for negligence—Historical sketch:—The history of the legislation in this country in respect of the responsibilities of common carriers and railways for goods &c., carried by them may be referred to in this connection. In England, the liability of a common carrier for safe delivery of goods entrusted to his care, has been always treated as independent of the contract to carry and was founded on common Law and custom under which he is regarded as an insurer of the goods entrusted to his care. *Irwin v. Flottilla Co. v. Bhagwan Das* 18 Cal. 620, 18 L. A. 121; *Berghelm v. Gt. E. R. Co.* 3 C. P. 221; *Cogges v. Bernard* 1 Smith L. C. P. 222.

This rule was held to prevail in this country and it was decided by a full Bench of the Calcutta High Court dissenting from the contrary view taken by the Bom. II. Court in *Kuverji Tulsidas v. G. I. P. Ry. Co.* 3 Bom. 109, that the Indian Contract Act Ss. 151 & 152, had made no change in it:—See *Mathura Kant v. Ind. G. S. N. Co.* 10 Cal 166; and this view was upheld by the Privy Council in the case cited above. In *E. I. Ry. Co. v. Jordan* 4 B. L. R. O. C. 97, which was a case under Act XVIII of 1854 it was ruled that railway companies in India were common carriers and liable as such, that is, insurer of goods delivered to them. The Railway Act of 1879, S. 2, provided that nothing in the Carriers' Act, 1865 was applicable to carriers by railway. It was nevertheless held in *Chagmal v. The Port Commissioners of Calcutta* 18 Cal. 427, that by repeal of the latter Act, so far as it related to railways and of the previous Railway Act of 1854, the liability of carriers, as it stood before the Act of 1854 and 1865, was restored and it was further decided, following the full Bench case already cited above, that the Contract Act did not affect such liability, and that after the passing of the Railways Act of 1879, the liability of the Indian Railways, was like that of other carriers, not limited to a liability for negligence, but also as insurers of goods delivered to them.

S. 72 of the present Railway Act IX of 1890 was framed to counteract the effect of these decisions and to declare the law in terms of the decision of the Bombay High Court in *Kuvviji v. G. I. P. Ry. Co.* (Supra). In this case it was held that the English common law rule under which common carriers are held liable as insurers of goods against all risks except the Act of God or the King's enemies is not now in force in India. In cases not met by the special provisions of the Act relating to railways and carriers, the liability of carriers for loss or damage to goods entrusted to them is prescribed by secs. 151 and 152 of the Contract Act IX of 1872; See also *Surendra Lal v. Secy of State* 21 Cal. W.N. 1125.

Chapter VII of the present Act has been framed mainly with the object of defining the limits of the above responsibility. *Changmal v. Bengal & N. W. Ry. Co.* 6 P. R. 1897 p. 25. *Madras Ry. Co. v. Goindrao* 8 M. L. J. 85 at p. 89; 21 Mad. 172.

Definition of negligence:—The term "negligence" has been defined by Baron Alderson in the case of *Blyth v. Birmingham Waterworks Co.* 25 L. J. Ex. 212. "as being the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do." Justice Willes has defined it in the case of *Paughan v. Taff Vale Ry. Co.* 5 H. & N. 679 as being the absence of care according to the circumstances. Thus it is apparent that what is or is not negligence must always depend on the whole of the facts and surroundings of each particular case. This is well put by Agnew, J. in the case of *The Philadelphia Ry. Co. v. Spacren* 47 Penn. st. 300. "There is no absolute rule as to what constitutes negligence, that conduct which might be so termed in one case being in another properly considered ordinary care; nor in cases where it is concurrent, will the same rule apply to adults and children. It is therefore always a question of fact for Jury under the instructions of the court, as to the relative degree of care or the want of it growing out of the circumstances and conduct of the parties".

Thus from the above definitions it is apparent that in cases of railway traffic the circumstances are such that the consequences of negligence may be exceptionally disastrous, the degree of care expected will be relatively high.

Wilful neglect:—Wilful neglect is something more than ordinary neglect and has a different signification. "Neglect" may be due simply to a careless omission to do what one should do, whilst "wilful neglect" implies that one knows that one should do a particular act and deliberately abstains from doing it; Of course, one may be said to presume to will to omit to do what one does not do, but that is an inference of the law for the purpose of affixing responsibility in cases of omission and the law does recognise and give effect to deliberate omissions where it would not be omissions not deliberate; *Lewis v. G. W. Ry. Co.* 47 L. J. Q. B. 131; placing of the leaking package of acid on a consignment amounts to wilful negligence. *M & S. M. Ry. v. Muttai Subba Rao* (1920) 55. Ind. Cas. 754; 38 Mad. L. J. 360; 21 Lawyer 341.

A person is said to be guilty of *wilful neglect* when he intentionally, and of set purpose, does something which ought either to be done in a different manner, or not at all, or omits to do something which ought to be done.

A loss is said to be due to wilful neglect when such neglect is either the sole effective cause of the loss or is so connected with it as to be materially contributing to it. *Dawlatram v. Secy of State* 9 S. L. R. 177; 17 Cr. L. J. 79; 32 Ind. Cas. 551; Thus there would be wilful neglect on the part of a railway servant if he acted under the supposition that his action might be mischievous and with an indifference to his duty to ascertain whether it was mischievous or not. *M. & S. M. Ry. Co. v. M. Subba Rao* 43 Mad. 617; 38 Mad. L. J. 360.

Neither the non-transshipment of the goods nor their sale without notice is equivalent to *wilful neglect* on the part of the Ry. Administration *Jhanni Lal v. B. B. & C. I. Ry.* 14 All. L. J. 396, 35 Ind. Cas. 265. The term "wilful neglect" is very similar to the term "wilful default" *Benett v. Stone* (1903); 1 Ch. 509. *Magantal Pursotam v. B. B. & C. I. Ry. Co.* (unreported) 7th Sept. 1909 Bom. H. Ct.

Liability of company for wilful neglect:—To render the railway administration liable, loss must be due to some other cause amounting to wilful neglect than an unforeseen event such as fire, robbery from a running train or any other event *ejusdem generis*. Thus the railway administration is only to be liable for loss through wilful neglect (fire, robbery from a running train or any other unforeseen event or accident are not to be considered 'wilful neglect') arising out of circumstances which the railway might reasonably have anticipated i.e. through wilful neglect in improperly loading the goods or improperly fastening the doors of the wagon by which the goods fell out on to the track, these being the results which might have been foreseen. The railway administration does not need to show either the cause of loss or that the loss was caused by an unforeseen event or accident. *Magantal v. B. B. & C. I. Ry.* (Supra); *Sheppard & son v. Mid. Ry. Co.* (1916) 85 L. J. (K. B.) 283; 114 L. T. 515.

Gross negligence:—Gross negligence is the omission of that care which even *inattentive and thoughtless* men never fail to take of their own property.

"Gross negligence" is the failure to exercise reasonable care, skill and diligence. *Coggs v. Bernard* 1 Smith L. C. 222.

The expression "Gross negligence" has been objected to by many Judges and other authorities. In *Wilson v. Brett* (11 M. & W. 113) it was said by Rolfe B. that negligence and gross negligence are the same thing with the addition of a vituperative epithet. In *Beal v. South Devon Ry. Co.* (3 H & C. 337) the Court of Exchequer laid it down that the failure to exercise reasonable care, skill diligence is gross negligence, but that what is *reasonable* varies in the case gratuitous bailee and of a bailee for hire.

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A fair test of what is reasonable care is often the consideration of w

habitually done in the same or similar circumstances. *Bryant v. North Metro Tramway Co.* (1890) 6 T. L. R. 396.

In the case of a carrier, who is a person who holds himself out for the careful and skilful performance of a particular duty, gross negligence seems to include the want of that reasonable care, skill and expedition which may properly be expected from a person so holding himself out and his servants (*Angell on Carriers* 5th Ed. p. 29-31); *Beal v. Devon Ry. Co.* 11 L. T. N. S. 184; *Shields v. Blackburne* 1 Black II. 159.

Question of negligence is a mixed question of law and fact.—The Judge has a certain duty to discharge and the Jurors have another and a different duty. The Judge has to say whether any facts have been established by evidence from which negligence *may be* reasonably inferred; the Jurors have to say whether from those facts, when submitted to them, negligence *ought to be* inferred. It is of the greatest importance in the administration of justice that these separate functions should be maintained and should be maintained distinct. It would be a serious inroad on the province of a Jury, if, in case where there are facts from which negligence may reasonably be inferred, the Judge were to withdraw the case from the jury on the ground that, in his opinion, negligence ought not to be inferred, and it would, on the other hand, place in the hands of the Jurors a power which might be exercised in the most arbitrary manner; if they were at liberty to hold that negligence might be inferred from any state of facts whatever." (Lord Cairns in *Metro. R. Co. v. Jackson* 3 App. Ca. 193 at p. 197; 47 L. J. C. P. 303); strictly speaking the Jurors have to say not whether negligence ought to be inferred, but whether, as reasonable men, they do infer it.

"It is not, however, in many cases practicable completely to sever the law from the facts. But it has always been considered a question of law to be determined by the judge, subject of course, to review, whether there is evidence which, if it is believed, would establish the facts in controversy. It is for the jury to say whether, and how far, the evidence is to be believed, And if the facts as to which evidence is given are such that from them a further inference of fact may legitimately be drawn, it is for the jury to say whether that inference is to be drawn or not. But it is for the judge to determine, subject to review, as a matter of law, whether from those facts that further inference may legitimately be drawn." (Lord Blackburn in *Ryder v. Wombwell* L. R. 4 Ex. 32; 38 L. J. Ex. 8.

When railway company liable for negligence.

(A). **The standard of duty.**—The standard of duty is not the foresight and caution which this or that particular man is capable of, but the foresight and caution of a prudent man—the average prudent man, or a reasonable man standing in this or that man's shoes. "If a man's conduct is such as would be reckless in a man of ordinary prudence, it is reckless in him. Unless he can bring himself within some broadly defined exception to general rules, the law deliberately leaves

his personal equation or idiosyncrasies out of account, and peremptorily assumes that he has as much capacity to judge and foresee consequences as a man of ordinary prudence would have in the same situation".—Pollock on Tort 5th Ed. p. 410-412; *Commonwealth v. Pierce* 138 Mass. 165; *Jones v. Bird* 5 B & Ald at pp. 845-6.

(B). **Burden of proof.**—When there is no contract between the parties, the burden of proof is on him who complains of negligence. He must not only show that he suffered harm in such a manner that it might be caused by the defendant's negligence. He must show that it was so caused and to do this he must prove facts inconsistent with due diligence on the part of the defendant. (Pollock p. 414). The plff. must prove his case and the mere fact that the deft. can not explain the cause of an accident does not of itself render him liable. *Macfarlane v. Thomson* 22 Sc. L. R. 179; unless the circumstances are such as to call upon him for an explanation. *Walton & Co. v. Vanguard Motorbus Co. Ltd.* (1908) 25 T. L. R. 13.

The plaintiff must show in the first instance the loss or deficiency, and then the railway company will be bound to show that the loss occurred under circumstances which would exempt a bailee from responsibility for it. *Sesham v. Moss* 17 Mad 445 at p. 446; Benson J. said while delivering the judgment that when the loss is established it lies on the defendants to show that they took as much care of the goods as a man of ordinary prudence would under similar circumstances have taken of his own goods of a similar kind, and that the loss occurred notwithstanding such care. *Trustees of the Harbour of Madras v. Best & Co.* 22 Mad 524 at p. 537; *Nankurun v. I. M. Ry. Co.* 22 All 361 *Plowden v. S. P. & D. Ry. Co* P. R. 127 of 1882 (civil) *River Steam Navigation Co. v. Chotumull* 26 Cal. 393; and *Md. Ry Co v. Govind Rao* 21 Mad. 172. See also Sec. 76 and the notes thereon. Under art 30 of Limitation Act, the onus is on deft. to prove when the goods were lost. *M. & S. M. Ry. Co v. Bhimappa* 23 M. L. J. 511.

(C). **Negligence must be the proximate cause of injury.**—It will not be sufficient to prove that the negligence relied on by the plaintiff was the original source from which the injury arose. The fact that the injury would not have happened, but for the act or conditions complained of, will not in itself entitle the plaintiff to recover. He must go further, and show that such act or conditions were the proximate cause of the accident. The chain of events connecting cause and effect must be in clear and reasonable sequence—otherwise the original negligence may be held too remote. In fine, the accident must be such as, in the ordinary course of things, without straining the imagination, might reasonably be expected to result from the negligent act. A person is entitled to anticipate and guard against all reasonable consequences but he is not expected to anticipate and guard against that which no reasonable man would expect to occur. *Greenland v. Chaplen* 5 Ex. 248.

"Proximate cause" means an essential and material cause—that is some cause not altogether insignificant, without which the accident could not have happened. Barsons. p. 6.)

A greyhound was delivered to a carrier, with a string about his neck and the deft, gave a receipt acknowledging the delivery; the dog was afterwards tied by the cord, to a watch box, but within a short time he slipped his head through the noose and was lost. In a suit for damages it was held that the defendant was responsible. Lord Ellenborough said "the case was not like that of a delivery of goods imperfectly packed since there the defect was not visible; but in this case the deft, had the means of seeing that the dog was insufficiently secured. After a complete delivery to the defendant, he became responsible for the security of the dog, the property then remained at the risk of the defendant, and he was bound to look him up or to take other proper means to secure him. The owner had nothing more to do than to see that he was properly delivered, and that it was then incumbent on the deft., to provide for his security". *Stuart v. Crawley* 2 Stark 323; 20 R. R. 621; *Alley v. G. W. Ry. Co.* L. R. 6, C. P. 44; 40; 40 L. J. C. P. 9.

(D). Liability for theft by company's servants.—Goods may be lost by the default of a servant which is not in the nature of negligence, nor within the scope of the servant's authority. Thus goods may be stolen by a servant without any negligence on the part of the company. This is certainly a loss by the default of a servant and the company may protect themselves against liability for such default by making conditions, although the conditions are neither reasonable nor signed. If, however, the theft of the servant was facilitated by negligence on the part of the company, the company would be liable *Shaw v. G. W. Ry. Co.* (1894) 1 Q. B. 373. *Shaw v. York Midland Ry. Co.* 13 Q. B. 347; *Chippendale v. L. & Y. Ry. Co.* 21 L. J. Q. B. 22.

A firm of tea merchants sent a consignment note to their wharfingers requesting them to deliver chests of tea to a Ry. Co. to carry and deliver them to the consignee. A carter in the service of the Ry. Co., who was at the time absent from work on sick leave presented himself at the wharf in a uniform and with a horse and cart of the Ry. Co. and demanded and received the tea which he then converted to his own use. The company afterwards prosecuted him to conviction for larceny laying the property in the tea in themselves. In an action by the tea merchant for breach of duty as common carriers, the Ry. Co. in the absence of negligence, was held not liable, in as much as, though they had ratified the *de facto* possession of the tea by the carter they had not ratified any possession under a contract of carriage. *Harrison & Crossfield Ltd. v. London & N. W. Ry.* (1917) 2 K. B. 755.

A bailee is not responsible in respect of the criminal act of his servant, the same not having been done within the scope of his employment. (*Abraham v. Bullock* (1922) 86 L. J. 796 distg) *Cheshire v. Bailey* (1905) 1 K. B. 237.

If articles be stolen from bailee's shop, notwithstanding the care he had taken the bailee is not liable 90 P. R. 1900.

(E). **Liability of a person employing servants for the latter's acts:—**Persons who undertake to do certain things and who employ servants to do those things are responsible for the acts of those servants done in the discharge of the duty entrusted to them, *Madras & S. M. Ry. Co. v. M. Subba Rao* 38 Mad. L. J. 360=43 Mad. 617.

(F). **Liability for acts of railway police:—**Apart even from express statutory authorization, the employment of police by a company for the protection of property under their control is within the scope of the company's business, and for their acts, as servants of the company, the company may be made liable. *Walker v. S. E. Ry. Co.*, L. R. 5 C. P. 640; *Lambert v. G. E. Ry. Co.* (1909) 2 K. B. 776.

(G). **Liability for robbery:—**In an action for damages for loss by robbery in the defendant's train on the grounds (1) that the station master at the station where robbery occurred refused to detain the train to enable the plaintiff to recover the money and arrest the thieves and (2) that the robbery was directly due to overcrowding. Held:—that there was no negligence in not detaining a train as no duty was cast upon the station master to detain it and therefore the company was not liable and that the damage was too remote. *Cobb v. G. W. Ry. Co.* H. L. (1894) A. C. 419; *Kuverjee v. G. I. P. Ry. Co.* 3 Bom. 109.

(H). **For loss by fire:—**Where goods are delivered to a railway company for carriage, and such goods are lost or destroyed while in the custody of the company, it is not for the owner suing for compensation for such loss or destruction to prove negligence on the part of the company, but when the owner has proved delivery to the company, it is for the company to prove that they have exercised the care required by the Indian Contract Act of bailees for hire. *Nanku Ram v. Ind. Mid. Ry. Co.* 22 All. 361; *River Steam Navigation Co. v. Choutmall* 26 Cal. 398; *Trustees of the Harbour of Madras v. Best & Co.* 22 Mad. 544; *Ishwerdas v. G. I. P. Ry. Co.* 3 Bom. 120; *Forward v. Pittard* 1 T. R. 27; *Covinton v. William. Gow.* 115.

(I). **Liability for inherent vice or defect of animals and goods.—**The expression "*Vice*" does not mean moral vice in the thing itself or its owner, but only that sort of vice which by its internal developement tends to the destruction or the injury of the animal or the thing to be carried, and which is likely to lead to such a result. Inherent vice or defect in the thing carried absolves the carrier from responsibility for injury immediately caused thereby *Nugent v. Smith* 34 L. T. at p. 834. By the term "*Vice*" is implied in animals some passion or disposition inherent in the animals themselves tending to produce unruliness or frenzy. Where goods are in the carrier's custody, it is a rule at common law, that he is responsible for every injury sustained by them occasioned by any means whatever except only the Act of God or the King's enemies; yet it is to be understood in all cases that the rule does not cover any losses not within the exceptions which arise from the ordinary wear and tear and chaffing of the goods in the course of their transportation, or from their ordinary loss, deterioration in quantity

or quality, in the course of the voyage or from their inherent natural infirmity and tendency to damage, or which arise from the personal neglect, or wrong or misconduct of the owner or shipper thereof. Thus, for example, the carrier is not liable for any loss or damage from the ordinary decay or deterioration of oranges or other fruits in the course of the voyage, from their inherent infirmity or nature or from the ordinary diminution; or evaporation of liquids or the ordinary leakage from the casks in which the liquors are put in the course of the voyage or from the spontaneous combustion of goods or from their tendency to effervescence or acidity or from their not being properly put up and packed by the owner or shipper; for, the carriers' implied obligation do not extend to such cases.

The company are bound to provide trucks sufficient to retain cattle under the ordinary incidents of a railway journey, but their liability do not extend further. In this case the escape of the bullock arose from no other cause than its own inherent vice, or restiveness or frenzy, and for injury from such a cause the company are not liable, *Blower v. G. W. Ry. Co.* L. R. 7 C. P. 655; 41 L. J. C. P. 263; *Randall v. The London and S. W. Ry. Co.* L. R. 7 Ex. 373 (Per Baron Bramwell) "There is no doubt in this case that the horse was the immediate cause of its own injuries. It slipped, or fell, or kicked, or plunged, or in some way hurt itself. If it did so from no cause other than its inherent propensities, "its proper vice," that is to say, from fright, or temper, or struggling to keep its legs, the defendants are not liable).

Where, however, the vice is brought out by negligence or default of the railway company, they are liable. *Wilson v. Lanc & York Ry. Co.* 30 L. J. C. P. 232; *Gill v. Manc S & L. Ry. Co.* 42 L. J. Q. B. 89; L. R. 8 Q. B. 186. (A condition that a company shall not be liable for injury caused to an animal by kicking or plunging from fright and restiveness may be a reasonable condition; but this only applies to fright and restiveness caused by the ordinary incidents of transit. If the fright is caused by negligence on the part of the company, such a condition will not protect them), *Pickering v. North Eastern Ry. Co.* 4 T. L. R. 7. (In this case it was found that the horse was injured in consequence of the train being subjected to a great deal of violent shunting and jerking and the trucks of which it was, for the most part, composed were not fitted with proper couplings). *Smith v. Midland Ry. Co.* 57 L. T. 813; *Lister v. Lanc & Yorkshire Ry. Co.* (1903) 1 K. B. 878; (where it was held that a common carrier is not liable for an injury to goods caused by an inherent latent defect in the goods themselves, the existence of which was unknown both to the sender and the carrier. The question of liability is not affected by the fact that in the course of the transit, the carrier's servants may have done some act contributing to the injury).

If perishable articles, say soft fruit, are damaged by their own weight and the inevitable shaking of the carriage, they are injured through their own intrinsic qualities. The carrier is not liable also for natural decay or deterioration of such goods

during the carriage (*Blower v. G. W. Ry.* L. R. 7 C. P. 655). If through pressure of other goods carried with them, or by an extra-ordinary shock or shaking, whether through negligence or not, the carrier is liable. *Beal v. South Devon Ry. Co.* 29 L. J. Ex. 411; *Pick v. N. Staff Ry. Co.* 32 L. J. Q. B. 241, *Leeson v. Holt* 1 Stark 186; *B. I. S. N. Co. v. A. H. Dalabhoj* 4 L. Burma Rep. 334. The fact that goods are injured in transit is in itself no evidence of negligence. *Russell v. L. & S. W. Ry. Co.* (1908) 24 T. L. R. 548.

(J). **For damaged condition of goods:**—The Company should take instructions from the consignee as to what he wishes to do before the same is put to auction, and if he does so, without first communicating with the plff, he is liable in damages. *Springer v. G. W. Ry. Co.* C. A. (1921) 1 K. B. 257.

(K). **For fragile goods:**—Degree of care required of a carrier in dealing with goods depend upon and vary with nature and condition of the thing carried. *Per Blackburn and Lush JJ.*:—Some goods require much more tender handling than others, and the line of conduct which the carrier should propose to himself is that which a prudent owner would adopt if he were in the carrier's place, and had to deal with the goods or animals under the circumstances and subject to the condition in which the carrier is placed, and under which he is called to act. *Gill v. M. S. & L. Ry. Co.* L. R. 8 Q. B. 186; 42 L. J. Q. B. 89; *Phillips v. Clarke* 26 L. J. C. P. 168.

Sender to inform where special care necessary. The consignor should inform the company at the time the goods are delivered to them for carriage, if special care is necessary in dealing with the goods. If he does not do so, he would be responsible for concealing the peculiar nature of their contents *Baldwin v. London C. D. Ry. Co.* 9 Q. B. D. 582.

If any brittle or perishable commodity, requiring great care for its safe conveyance, is bailed to a carrier, enclosed in boxes, and no directions are given as to how the boxes are to be carried, and no notice of the peculiar nature of their contents given, the carrier is only bound to take the ordinary care of the boxes which their general character and appearance seem to require.—*Angell on carriers*, 5th Ed. p. 253.

(L). **Packing:**—If goods which require to be packed are offered for carriage, the carrier may lawfully refuse to accept them unless they are properly packed. *Munster v. S. E. Railway Co.* 27 L. J. C. P. 308, See also *Sutcliffe v. G. W. Railway Co.* (1910) 1 K. B. 478.

(M). **Liability for loss occasioned by negligent packing:**—Per Williams J, in *Munster v. S. E. Ry. Co.* (supra). "There may be cases where articles of this (*fragile and perishable commodities*) description (bales of rugs and shawls) may be so carelessly and improperly packed as reasonably to justify a refusal on the part of the company to accept them because their condition may entail upon the company extra care and extra risks. But it does not follow that they would be justified in rejecting every package which may be . . ."

packed and if they do so an action lies against them for damages. Insufficient packing does not necessarily relieve the carrier but it may affect the amount of damages to be recovered. *Cox v. L. & N. W. Ry. Co.* 3 F. F. 77; *Higginbotham v. G. N. Ry. Co.* 2 F. F. 796; *Hart v. Buxendale* 16 L. T. N.S. 396; *Barbur v. S. E. Ry.* 34 L. T. 67; *Buskell v. Smith & G. W. Ry. Co.* (1919) 2 K. B. 362 C.A. The carrier's knowledge of the insufficient packing of the goods at the time of their receipt will not preclude him from setting up as a defence that the damage was due to the insufficient packing. *Gould v. South Eastern & Chatham Ry. Co.* (1920) 2 K. B. 186.

Goods delivered for carriage improperly packed—knowledge of company:— Where goods are delivered to a common carrier for carriage insufficiently packed, and are damaged in the course of the transit, the carrier's knowledge of their condition at the time of the receipt, will not preclude him from setting up as a defence that the damage was due to insufficient packing. *Gould v. South Eastern & Chatham Ry. Co.* (1920) 2 K. B. 186; 123 L. T. 236; 89 L. J. (K. B.) 700.

(N). *Damageable goods carried unpacked:—*The Consignment Note contained in substance a notice that the defendant would not carry the specified damageable goods at the company's risk except when properly protected by packing, but that the sender might consign them not so protected if he agreed to relieve the deft. from liability for loss or injury except that it arose from wilful misconduct on the part of their servants. One of the conditions on the back of the Consignment Note was "The company will not be liable for any loss of, or damage to or delay of goods resulting from their not being properly protected by packing"; subject to the above condition the plaintiff consigned flushing casterns lined with lead which were fitted with cross bars. Many of the cross bars and levers were broken in transit owing to their brittle nature and their not being properly protected by packing. In a suit by the plff., to recover damage, for injury done to his goods in course of transit, it was held that the goods were carried by the deft., by virtue of their statutory obligation under S. 2 of the Railway and Canal Traffic Act (1854) to afford reasonable facilities for the carriage of traffic; that the requirement of packing was not a refusal of reasonable facilities and that the condition imposed on the carriage of unpacked articles was a just and reasonable condition and that the judgment was entered for the Ry. Co. *Sutcliffe v. G. W. Ry. Co.* (1910) 1 K. B. 476.

(O). *Liability for loss due to improper address:—*When goods are delivered to a Railway Co. for conveyance they ought to be fully, distinctly and amply addressed, so that the owner or consignee may be easily known, and if on account of consignor's failure to do so, without any fault on the part of the Railway Co., the owner or consignee sustains a loss or any inconvenience, he must bear the same. *Caledonian Ry. Co. v. Hunter & Co.* 20 Sess. Ca. 1097; *Smith v. Buskell* (1919) 2 K. B. 362 C.A.

If the chief cause of delay in delivery of the goods be the improper and imperfect address of the consignee, the company will not be held responsible for the

consequences of such delay, and this though their own conduct in the matter be not free from blame. "There is no doubt" said Justice C. Hope "that in order to enforce that liability which ought to exist in the case of railway carriers as well as ordinary carriers, we ought to require a full, distinct and ample address. If the address be such, and any thing afterwards arises from the fault or negligence of the Ry. Co., whether from misleading or from having an imperfect notion of the destination of the goods where there is a full address or by sending them by a wrong line, or by negligence on the part of those for whom the Ry. Co. is responsible, from whatever cause, the company is liable for delay or neglect when the address of the goods is full and distinct. If the address be not ample, full and distinct, the delay or interruption which takes place arises from fault on the part of the sender, who is the means of putting the whole thing wrong. With him the fault begins, and he is the cause of the goods not going to their proper destination. See also *Wilson & Son v. Scott Hunse* 302; *Bradley v. Dunipace* 7 H. & N. 200; *Stewart & Co. v. Gordon* 14 Sess. Ca. (2nd Series) 434; *Hoare v. G. W. Ry. Co.* 37 L. T. 186.

(P). **Wilful misconduct:**—"Wilful misconduct" means misconduct to which the will is party as contra-distinguished from accident, and is far beyond any negligence, even gross or culpable negligence, and involves that a person wilfully misconducts himself who knows and appreciates that it is wrong conduct on his part in the existing circumstances to do, or to fail or omit to do, a particular thing, and yet intentionally does, or fails or omits to do it, or persists in the act, failure or omission, regardless of consequences, or who acts with reckless carelessness, not caring what the result of his carelessness may be. *Graham v. Belfast & Northern Counties Ry.* (1901) 2 Ir. K. B. 13. *Forder v. G. W. Ry. Co.* (1905) 2 K. B. 532; *Smith v. G. W. Ry. Co.* (1921) 2 K. B. 237. C. A.; *Lewis v. G. W. Ry. Co.* (1919) 1 Ch. 1; 3 Q. B. D. 195; 47 L. J. Q. B. 131. (Vide Macnamara on the Law of Carriers &c. p. 157).

It is impossible to lay down any general rule as to the facts from which one can infer in the absence of explanation of loss, "loss by wilful misconduct of the company's servants." It must depend on the nature of the subject matter and of the state of the transit reached in each particular case. For instance, if the company were carrying an elephant and would say nothing as to why it was not delivered, as an elephant can hardly disappear without a company's servant knowing it, one would easily find that it was lost either by wilful misconduct of the company's servants or by their wilfully not at once informing some superior that it had disappeared when it could easily be traced and recovered. On the other hand if a small parcel disappeared from a place to which both the company's servants and outsiders had free access, in a time of a great pressure of business, it would be impossible to draw any inference as to what had really happened. In *Smith v. Midland Railway Co.* (1919) 88 L. J. K. B. 868; the court felt able to find wilful misconduct of the Co's servants from the fact that part of the contents of a parcel had disappeared, the parcel having been opened, repacked with rubbish, and done up again. In such a case such an operation

must have taken some time, and have been carried out on the company's train by a person who could calculate on being free from disturbance for the considerable time taken in unpacking and repacking, facts which pointed strongly to theft by a servant of the company. *Smith Ltd. v. G. W. Ry. Co.* (1921) 2 K. B. 237. (*Curran v. Mid Ry. Co.* (1896) 2 I. R. 183 considered); *Central India Sp. & W. Co. v. G. I. P. Ry.* (1922) 24 Bom. L. R. 272.

Plaintiff, the owner of the goods sold portion of them to F. The goods were ascertained and forwarded by the defendant's line but addressed by mistake to "the order of Jarvis." Jarvis refused to take the goods. Jarvis applied to the defendants for goods similar in quantity and kind to the plaintiff's goods and consigned by a person of a like surname. The defendants, without inquiry, delivered the goods to Jarvis. The consignment note signed by the plaintiff's agent relieved the defendants from liability "except upon proof that such loss, detention or injury arose from wilful misconduct." In an action for the price of the goods.—Held, (1) that the property in the goods had not passed from the plaintiff, and, therefore, he was the proper person to sue; (2) That the condition in the consignment note extended to the defendants as involuntary bailees, under the circumstances; and (3) that the delivery of the goods to Jarvis amounted to "Wilful misconduct"—*Hoare v. G. W. Ry.* 37 L. T. 186. Mere mis-delivery does not amount to wilful misconduct *Stevens v. G. W. Ry. Co.* 52 L. T. 324.

A Ry. Co. Contracted to convey the plant of a switchback Ry. at a specially reduced rate, one of the conditions of the contract being that the proprietors of the goods should relieve the company of all liability except for damage arising from the "wilful misconduct" of the company's servants. One of the company's regulations directed that all loads must be gauged "when there is any reason to doubt that they are not within the dimensions" specified for the lines over which they have to travel; The S. M. at the station of departure did not gauge the load but merely judged the height of it with his eye and concluded that it did not exceed the dimensions. In this he was mistaken and the part of the load in the course of transit, came in contact with the smoke board of a bridge beneath which the train was passing and was damaged:—Held that the damage was due to "wilful misconduct" of the S. M. for which the Co. was liable. (*Lewis v. G. W. Ry. Co.* 3 Q. B. D. 195 doubted). *Bastable v. The North British Ry. Co.* (1912) 49 Sc. L. R. 446.

(Q). **Liability limited to wilful misconduct—onus of proof.**—A passenger having contracted with a Ry. Co. that they were to be exonerated from liability in respect of the transit of his goods, save when the damage arose from their wilful misconduct, delivered at B for carriage to M a case of articles which the Ry. Co. knew to be perishable goods requiring to be forwarded without delay. They failed to dispatch the goods by either of two trains which would have ensured their arrival in time for the M markets on the next morning for which they were intended, and when the goods did arrive in M they were late and being perishable had deteriorated in value. The consignee refused, to take delivery, and in an action

against the company for the loss occasioned by their wilful misconduct in delaying the goods it was held that under the circumstances, unreasonable delay even though entirely unexplained was not sufficient to amount to wilful misconduct and that it lay upon the plff. to prove that the defts. intentionally delayed the goods. *Graham v. Belfast and Northern Counties Rys.* (1901) 2 Ir. R. 13 Q. B. D; *Sheppard & Son v. Mid. Ry. Co.* (1916) 114 L. T. 515.

(R). **Liability for misdelivery of goods:**—Loss and delay are often caused by misdelivery, i.e., by delivery at a wrong place or to the wrong person. If the misdelivery is due to the negligence of the consignor (as for example by imperfectly addressing the goods) and the company are guilty of no negligence, then the company are not responsible. *Mansell v. Valley Printing Co.* (1908) 2 Ch. 441 C. A. As a general rule, if a company deliver goods at a place at which they are addressed in the ordinary course of business, they have done all that they are bound to do. It is impossible for them to know whether the person who receives the goods at the place is really the consignee or not, or whether he has really authority to receive them. If, however, when goods are taken to the place to which consigned, and there are any circumstances sufficient to raise suspicion in the mind of a reasonable man as to the right of a person there to receive the goods, the company may be liable if they hand them over to such person without inquiry. *Heugh v. L. & N. W. Ry. Co.* L. R. 5 Ex 31; *M'Kean v. M' Ivor* L. R. 6 Ex. 36. *Ramchandra v. G. I. P. Ry.* 20 Bom. L. R. 581; 44 Ind. Cas. 401. If the company do not deliver at the address indicated they must deliver to the consignee or his agent; and if they deliver to any other person, and the goods are lost in consequence, they will as a rule be liable unless protected by an owner's risk contract.—Disney on carriage by railway p. 74-78. *Neston Colliery Co. v. L. & N. W. Ry. Co.* 4 Ry. & Can. Tr. Cas. 257; *Stephenson v. Hart* 1 Bing. 476; *Hoare & Co. v. G. W. Ry. Co.* 37 L. T. 186; *Stevens v. G. W. Ry. Co.* 52 L. T. 324; *Eagleton v. The E. I. Ry Co.* 8 B. L. R. 581; *Cal. Ry. Co. v. Hunter & Co.* 20 Sess. Cas. (2 series) 1097; *L. & Y. Ry. Co. v. McNicoll* (1918) 88. L. J. (K. B.) 601.

(S). **Liability for loss by defective waggons:**—The liability for loss or damage caused by improper and defective waggons is regulated by Ss. 151 & 152 of the Indian Contract Act i.e., they are bound to take such care of the goods or animals as a man of ordinary prudence would, under similar circumstances take of his own goods or animals. Thus in an action brought by the plaintiff to recover damages for injuries caused to a horse on the ground that the horse was injured in consequence of the improper and insufficient vehicle of the defendant company in which he was carried. William J, in delivering the judgment said:—The sufficiency or insufficiency of the vehicles by which the company are to carry on their business is a matter, which they, and they alone, have or ought to have the means of fully ascertaining. And it would not only be unreasonable, but mischievous, if they were to be allowed to absolve themselves from the consequences of neglecting to perform properly that which seems naturally to belong to them as a duty". *M'Manus v. Lanc.*

& *York Ry. Co.* 28 L. J. Ex. 353. *Arratson v. E. I. Ry. Co.* (1917) 38 Ind. Cas. 143. Delivery of horse in injured condition, after delay in transit held evidence of negligence. *Defong. v. London & N. W. Ry. Co.* (1914) 3 L. J. (C. C.) 13. This obligation of a railway company extends to everything except, latent defect which could not be discovered by use of any reasonable skill or diligence. *Readhead v. Midland Ry. Co.* L. R. 4 Q. B. 379, but see *Nevin v. G. S. & W. Ry. Co.* 30 L. R. Ir. 125; and *Forward v. Pittard* 1 R. R. 142.

(T). **Liability for damage in transit by water owing to defective sheeting.**—The Railway Company will be held liable if any damage ensues to the goods while in transit by water owing to defective sheeting, *London & N. W. Ry. Co. v. Hudson & Sons Ltd.* 11 L. (E.) (1920) A. C. 324; (1920) W. N. 63; 122 L. T. 530.

(U). **Liability for possessing defective weighing machine.**—A Railway Co. kept a weighing machine which had been so out of repair that when anything was weighed by it, the weight appeared 4 lbs. more than was really the weight; Held, that the company was liable to be convicted for having in its possession a weighing machine which on examination was found to be incorrect or otherwise unjust. *G. W. Ry. Co. v. Bailie* 34 L. J. M. C. 31.

(V). **Charge for use of weighing machines.**—A railway company may charge for the use of weighing machines for goods at its stations. *L. & N. W. Ry. Co. v. Price* 11 Q. B. D. 485.

(W). **Whether company bound to reweigh and certify shortage before delivery.**—A Railway Co. is not bound by law either to reweigh goods or certify shortage at the time of delivery to the consignee. Therefore, the refusal of a Ry. Co. to reweigh goods before delivery does not justify a consignee in refusing to take delivery of the goods. *Surajmal v. Agent B. N. Ry.* (1920) 58 Ind. Cas. 200; *Baijulat v. B. N. Ry.* 58 Ind. Cas. 200; (Patna H. Ct. unreported); *Jankidas. v. B. N. Ry.* 13 Ind. Cas. 509; 16 Cal. W. N. 356; 15 Cal. L. J. 211; *Jagannath Marwari v. E. I. Ry.* 45 Ind. Cas. 933; 22 Cal. W. N. 902; *Ranjash Agarwala v. Ind. G. N. & Ry. Co.* 41 Ind. Cas. 387; 22 Cal. W. N. 310; *Kokamal v. G. I. P. Ry.* 21 Ind. Cas. 428; 11 A. L. J. 775n; *Contra Rohilkand & Kumaon Ry. v. Esmailkhan* 13 All. L. J. 417 at p. 421; but, the refusal of the Company does not in any way affect the right of the consignee who may weigh the goods himself and claim the price of the shortage in weight *Ranjash v. Ind. G. S. N. Co.* 41 Ind. Cas. 387; *R. & K. Ry. v. Esmailkhan* 11 All. L. J. 417.

Delivery to a wrong person under false representation.—Where a person by falsely representing himself to be the servant of the company obtains goods from a clerk of the Co., the company are not estopped from denying that he is their servant. *Way v. G. E. Ry. Co.* 1 Q. B. D. 692; 45 L. J. Q. B. 874.

Not obliged to take extra-ordinary precautions.—A railway company is not bound to use extra-ordinary efforts or incur extra expense in order to sur-

1 H. & N. 408; in which hotel expenses were allowed) but if he has incurred any personal expenses in inquiring for the goods, he is entitled to recover such expenses. *Hales v. L. & N. W. Ry. Co.* 4 B. & S. 66.

Duties of Railway.

(A). **Duty of railway to carry:**—"At common law, a carrier is not bound to carry for every person tendering goods of any description, but his obligation is to carry according to his public profession". (Parke, B., in *Johnson v. Midland Ry. Co.* 4 Ex. 371; 18 L. J. Ex. 366; "There are few enactments which, in plain and distinct terms, impose upon railway companies the duty of carrying any particular things. The duty to carry any particular class of goods depended upon whether they did or did not profess to carry such goods as common carriers". *Dillon v. Gt. N. Ry. Co.* 13 Q. B. D. 176; 56 L. J. Q. B. 111.

A Railway Co. is by law a common carrier. It cannot lawfully refuse to carry goods properly tendered to it. It is given statutory existence and wide statutory powers in exchange for public duties and it is bound to carry goods. *Sohantol v. E. I. Railway* (1922) 65 Ind. Cas. 109 at p. 112; 20 All L. J. 31.

It is the duty of the company to receive and carry the goods of any person offering to pay his hire, to and from particular places, unless his conveyance be full or the goods are of such a kind as to be liable to extraordinary danger, or where packing is so defective as to entail upon them extra care and extra risks, or the goods are of such a kind that they are unable to convey or are not in the habit of conveying and do not profess to carry. *Lane v. Cotton* 1 Ld. Raym. 652; *Pickford v. Grand. Junc. Ry.* 3 M. & W. 372. *Riley v. Horne* 5 Bing 217; *Jackson v. Rogers* 2 Show 332; *Boston v. Downan* 4 B & A 21; *Mcmanus v. Lanc & York Ry. Co.* 28 L. J. Ex. 353. *Munster v. South Eastern Ry. Co.* 27 L. J. C. P. 308; 4 C. B. (N. S.) 676; Goods ought to be plainly and legibly marked by the consignor. *Brodley v. Dunipace* 7 H. & N. 200.

(B). **Country in disturbed condition:**—If the country through which the carriers' vehicle has to pass is in so disturbed a state that the goods cannot be carried safely, the carrier may lawfully refuse to accept them, *Edwards v. Skirrat* 1 East 604.

(C). **Carriage of goods by passenger train:**—Railway companies are not bound to carry goods, except perishables and passengers' luggage, by passenger train, therefore if they consent to carry such goods by passenger trains they are entitled to dictate the terms upon which they will so carry them. *Stone & Co. v. Midland Ry. Co.* (1904) 1 K. B. 669; See also *Independent News Papers Ltd. v. Great Northern Railway Co.* (1913) 2 L. R. 255 (carriage of news-papers by passenger trains).

(D). **Carrying goods by shortest route:**—When a company undertake to carry goods, they undertake to carry them by their ordinary route. They are not bound to carry them by the shortest route; they may carry them by a longer route if that is in the ordinary course of business. *Myers v. L. & S. W. Ry. Co.* L. R. 5

C. P. I.; "That the carrier is bound to carry according to the course, which he professes; and as stated in *Johnson v. Midland Ry. Co.* (18 L. J. Ex. 366), his obligation depends on what his conduct professes. He is bound to carry 'by the route which he holds forth, and which he professes to be his route; and when he carries goods by that route, he is bound to deliver in a reasonable time, having of course reference to route by which he is carrying. It is no breach on the part of the carrier if he does not carry by a shorter route, if that shorter route is not the route which he professes to follow. If the customer wishes to go 'by some other route he should ask, and then he can choose whether he will send by the carrier or make a special bargain. But when he sends by the usual route, the carrier must use reasonable diligence; and whether he has done so or not is a question of fact." Per Blackburn J. in *Hales v. L. & N. W. Ry. Co.* 32 L. J. Q. B. 292; 4 B. & S. 66.

(E). **Liability of carrying goods by a longer route:**—If the contract is to carry the goods by the nearest route, and that if the railway Co., to suit their convenience, wished to carry the goods by a longer route which offered far more opportunity for the loss to occur they are bound to give notice to the consignor so as to give him an opportunity of deciding whether he should sign Risk Note in Form B. or not. *Vali Mahomed v. G. I. P. Ry. Co.* (1922) 24 Bom. L. R. 316.

(F). **By Route specially agreed upon:**—If a railway Co. goes outside the terms of the contract and carries the goods by a route other than that agreed upon, which route was never contemplated by the parties and to which the consignor never agreed and from their being conveyed in a different way from what had been agreed to, the clause in the Risk Note relieving the company from liability &c. does not come into operation at all. *Vali Mahomed v. G. I. P. Ry.* (1922) 24 Bom. L. R. 316. *Neilson v. L. & N. W. Ry. Co.* (1921) 3 K. B. 213; *Mallett v. G. E. Ry. Co.* (1899) 1 K. B. 309; (*Foster v. G. W. Ry. Co.* (1904) 2 K. B. 306. dissented from).

(G). **Deviation from route-company not protected:**—Where a person delivers goods to a company to be carried to their destination by a particular route on a condition relieving the company from liability for delay except on proof that it arose from the company's wilful misconduct, and the company by mistake or intentionally carries the goods by a different route with resultant delay and damage, the consequence is not a performance of the contract and the company is not entitled to its protection. *Mallett v. G. E. Ry.* 1899 1 Q. B. 309; *Polwarth v. N. B. Ry. Co.* 1908. s. c. 1275; *Neilson v. L. & N. W. Ry. Co.* (1921) 3 K. B. 213.

It is very material to bear in mind what are the limits of the protection which the Risk Note affords. A consignor may well consent to bear the risk of loss or delay while his goods are being carried a specified distance of say 20 miles, but it is quite another thing to ask him to bear that risk while his goods are being carried a distance of perhaps 500 miles through some mistake

would become a chaos resulting in the ruin of the company under an avalanche of litigation). Whether he enquire or not, every customer dealing with Co. is bound not only by the ordinary route, *Hales v. London North Western Ry. Co.* 4 B. & S. 66, but also by the ordinary train arrangement, and hours of travel according to which they profess to carry. This is distinctly laid down in the judgments in *Ballards' case* 15 Ir. C. L. R. 560 and *Mc Nally's case* 26 Ir. C. L. R. 138; *Tobin v. L. & N. W. Ry. Co.* (1895) 2 Ir. R. 22. *Arunachalam v. Madras Ry.* 33 Mad. 120. 6 M. L. T. 292.

Carriage of goods &c by a different train than that agreed upon:— Fruits were delivered to the deft Ry. for carriage by *passenger* train on the terms of an *Owner's Risk Note*. The deft Co. carried it part of the way in a passenger train, and then caused it to finish its journey in a *Goods train* whereby its delivery was delayed. As it was an essential part of the contract that the fruit should be carried by passenger train and that consequently in transferring to a *Goods train* the deft Co. intentionally broke the contract in an essential matter *Gunyon v. South E. & Chatham Ry. Co.* (1915) 2 K. B. 370.

The word "*Misconveyance*" appears to be a new word in railway contracts, and not in the English language. It probably means conveyance in any way other than the way agreed or a reasonable and proper way. Conveyance by the wrong sort of train or the wrong route would be *misconveyance within the meaning*.

Since this case was decided, the form of Owner's Risk consignment note in general use has been altered, in England. Now the Company contract out of all liability for loss, damage, *Misconveyance*, misdelivery, delay or detention. &c.

Under the Railway and Canal Traffic Act of 1854 the following form of the consignment note is prescribed.

THE X. Y. RAILWAY.

CONSIGNMENT NOTE FOR GOODS TO BE CARRIED AT OWNERS' RISK.

The X. Y. Railway Company hereby give notice that they have alternative rates for the carriage of the undermentioned goods at either of which rates the goods may be consigned at the sender's option, (1) the ordinary rate, and (2) a lower rate charged upon the terms of the following Special Contract.

To the X. Y. Railway Company, _____ Station _____ 192.

Receive the undermentioned goods for carriage at the lower rate subject to the condition that the Company shall not be liable for loss, damage, *misconveyance*, misdelivery, delay, or detention of, or to such goods or a trader's truck or sheet (if any) containing or covering them except upon proof that such loss damage *misconveyance* misdelivery delay or detention arose from the wilful misconduct of Company's servants. But nothing in the aforesaid condition shall exempt the Company from any liability they might otherwise incur in the following of non-delivery pilferage or misdelivery that is to say:—

In *Garnett v. William* 5 B. & Al. 53 a parcel exceeding £ 5 in value was delivered to the defts to be carried from L. to W. by *Their Mail Coach*. The parcel was carried by the Mail for part of the Journey and then transferred into another coach belonging to different proprietors to be carried to its destination and was lost. The defts had previously given notice that they would not be responsible for loss of a parcel which exceeded £ 5 in value unless an insurance was paid. Notwithstanding such a notice the defts were held liable upon the ground that *putting the parcel into a different coach when they knew it was to go by their own was a misfeasance and not mere negligence* in the performance of the contract. In *Skat v. Fagg* 5 B. & Al 342 a parcel of bank-notes was delivered to the deft to be forwarded by Mail Coach. The deft sent it by a different coach whereby it was exposed to greater risk. The deft had given a similar notice to that in the preceding case. He was held liable as his act was one of misfeasance. In *Fazal Illahi v. E. I. Ry. Co.* (1921) 64 Ind. Cas. 863; 43 All 623; 19 All L. J. 654 a consignment of *Pataka Fire works* was accepted by defts for conveyance *by passenger train* and railway freight at parcel rate was charged. The deft Co. discovered subsequently that the conveyance of goods of this nature by passenger train was forbidden and that they could only be conveyed *by goods train*. Meanwhile the consignment not arriving, the consignor who intended to sell the "fire works" on the occasion of a festival sent a telegram to the Ry. authorities, who replied that the goods were still lying at the forwarding station as they could not be sent by a passenger train and that he should either remove the packages or authorize their despatch by goods train and he took no action and the goods were despatched by a goods train and arrived at destination about a month after the date on

(1) Non-delivery of any package or consignment fully and properly addressed unless such non-delivery is due to accidents to trains or vessels or to fire.

(2) Pilferage from packages of goods protected otherwise than by paper or other packing readily removeable by hand provided the pilferage is pointed out to a servant of the Company on or before delivery.

(3) Misdelivery where goods fully and properly addressed are not tendered to the consignee within twenty-eight days after despatch.

Provided that the Company shall not be liable in the said cases of non-delivery pilferage or misdelivery on proof that the same has not been caused by negligence or misconduct on the part of the Company or their servants.

This agreement shall be deemed to be separately made with all Companies or persons who shall be carriers for any portion of the transit (herein respectively referred to as the Company) and to include the conditions endorsed hereon.

Signature of Sender or his representative _____

Address _____

Senders must fully and accurately describe the contents of packages and must also clearly state whether carriage is payable by sender or consignee.

the plaintiff to recover compensation for loss of goods:—Held that the railway company were liable in damages.

The case was one of breach of contract; the defendants contracted to carry the goods and deliver them at N to the plaintiff, but failed to do so. Held further that the liability of the railway company was not affected by the fact that the station master at K acted wrongly in disregarding the instructions which he had received from S. *Chhaganlal v. E. I. Ry. Co.* 27 Bom. 597.

(4) **Pre-delivery.**—If a railway company parts with the goods before receiving the plaintiff's orders, the plaintiff in an action against the company was only entitled to nominal damages. A *Bona fide* delivery to a person whom the bailee knows not to be authorized to receive the goods, vests a right of action in the owner, and if the owner subsequently authorises the carrier to deliver the goods to the person to whom they have in fact been already delivered, an action may nevertheless be maintained against the carrier but nominal damages only are recoverable. *Hiorl v. L. & N. W. Ry. Co.* 48 L. J. Ex. 545.

(O). **Re-booking of goods after arrival at destination.**—The rules of a railway company prescribed certain procedure for the booking of goods. In accordance with those rules certain goods were booked from T to B. The plaintiff requested A the goods clerk and station master at H (on defendant's railway) to have the goods rebooked from B to H and for this purpose handed him the railway receipt with a written application which, however, was not in the form of consignment note used by the company. A, accordingly sent a service telegram to the station master at B asking him to re-book the goods. The station master there did not re-book the goods, and they were delivered at B. The plaintiff sued the railway company for damages for non-delivery at H. Held, that the defendant company had not contracted with the plaintiff to carry the goods from B to H. The mere fact that the plaintiff got the station master at H to send a service telegram to B did not constitute a contract to bind the company. *Malkarjun v. S. M. Ry. Co.* 27 Bom. 126=4 Bom. L. R. 890; *Garlon v. G. W. Ry. Co.* 27 L. J. Q. B. 375.

(P). **Company bound to deliver within reasonable time—liability for undue delay.**—Under S. 72 of the Railways Act, S. 161 of the Contract Act would govern the liability of the railway for nondelivery of the goods at the proper time. Under S. 46 of the Contract Act, the contract is to be ordinarily performed within reasonable time. It was, therefore, necessary for the defendants to prove that there were valid reasons which prevented them from delivering the goods at a time when they would ordinarily have been delivered. *E. I. Ry. v. Inderman* 20 All. L. J. 114; 65 Ind. Cas. 771.

Where, therefore goods were delivered after 25 days, instead of 7 to 10 days, and the delay was not explained, the railway was held liable to compensate for the loss caused by such delay. *E. I. Ry. v. Inderman.* (Supra).

If animals or goods are unduly delayed through the company's negligence the company will be liable to compensate the plaintiff for the loss.

liable, *Robinson v. G. W. Ry. Co.* 35 L. J. C. P. 123; 14 W. R. 206; *D'Arc v. L. & N. W. Ry. Co.* L. R. 9 C. P. 325; A common carrier of goods is not, in the absence of a special contract, bound to carry within any given period of time, but only within a time which is *reasonable* having regard to all the circumstances of the case; and is not responsible for the consequences of delay arising from causes beyond his control; and since his first duty is to carry safely, he is justified in incurring delay, if delay is necessary to secure the safe carriage.

A railway company was prevented by an unavoidable obstruction on its line from carrying goods within the usual time. The obstruction was occasioned by an accident resulting solely from the negligence of another company; Held that the railway company was not liable to the owner of the goods for damage to them caused by delay *Taylor v. G. N. Ry. Co.* 35 L. J. C. P. 210; L. R. I. C. P. 385; *Hales v. L. & N. W. Ry. Co.* 4 B. & S. 66; 32 L. J. Q. B. 292.

A carrier of goods or cattle is only bound to carry in a reasonable time under ordinary circumstances, and is not bound to use extraordinary efforts or incur extra expense in order to surmount obstruction caused by the Act of God as a fall of snow or severe cyclone. *Bridson v. G. N. Ry. Co.* 21 L. J. Ex. 51; *Donohoe v. L. & N. W. Ry. Co.* 15 W. R. 792. See also, *Surendra v. Secy. of State* (1917) 25 Cal. L. J. 37.

(Q). **What was reasonable time for delivery—Effect of a general strike of Ry. servants:—**In calculating what was a reasonable time within which goods had to be delivered, regard must be had to all the existing circumstances which would include the case of a strike not only on the part of servants of third parties but also of the servants of the carriers themselves. Lord Watson said "that a person entrusted with goods for carriage was not responsible for delay" so long as such delay is attributed to causes beyond his control and he has neither acted negligently nor unreasonably (*Hick v. Raymond & Reid* (1892) A. C. 22; *Sims & Co. v. Midland Ry. Co.* (1913) 1. K. B. 103; 17 Cal. W. N. No. 12 p. LXX. (1912) W. N. 279; 29 T. L. R. 81, 18 Com. Cas. 44.

Thus in a case where the defts agreed to carry a consignment of tomatoes from J to C, owing to the late arrival of the ship, and a strike of the defts's employees, considerable delay took place before the goods could be unloaded, and they as a whole when unloaded were found to be in a bad condition. The defts, without making any attempt to communicate with the owner and inform him of the condition of the goods sold them locally. The sale was held to be a breach of the contract to carry the goods, and a wrongful conversion as the defts had not proved that communication with the owner was commercially impossible. *Springer v. G. W. Ry. Co.* (1920) C. A. 89. L. J. (K. B.) 1919.

(R). **Late delivery—notice of purpose for which goods required:—**(1) That in the absence of a guarantee by the railway that the goods would reach before any particular date, and of notice by the consignor at the time of

consignment that the goods were required in connection with a particular purpose e. g. a festival, the consignor was not entitled to special damages and that he was entitled to ordinary damages for the non-delivery of the goods within a reasonable time.

That unless the object of the sender was specially brought to the notice of the carrier or circumstances were known to the carrier from which the object could be inferred, so that the object might be taken to have been within the contemplation of both parties, damages could only be recovered for the natural consequences of the failure of that object. *Fazul Illahi v. E. I. Ry.* (1921) 43 All 623; 64 Ind. Cas. 868; 19 All. L. J. 634; *Madras Ry. Co. v. Govind Rao* 21 Mad. 172; 8 M. L. J. 85.

The plaintiffs in the beginning of 1871 contracted to supply at 4 S. a pair, a large quantity of shoes to H & Co. who required them to fulfil a contract for the supply of the French army during the war. The last day for delivery by the plaintiff was 3rd February 1872, and all shoes not so delivered would be thrown back on the plaintiff's hands. The plaintiffs delivered a certain quantity of shoes to the Midland Railway at K, consigned to H & Co. in London in time to be delivered on that day. Notice was given to the station master that the plaintiffs were under a contract to deliver on that day, and if not so delivered the shoes would be thrown on their hands, but no further information. The shoes were not delivered by the company till the morning of the next day and were rejected. The plaintiffs using their utmost endeavours could only sell the rejected shoes at 2s. 9d. a pair and in consequence of the cessation of the war, the consignees, but for their French contract, could not have sold them at a higher price, even if duly received. The company paid into court £ 20 which was sufficient to cover the incidental expenses and the ordinary damage to which the plaintiffs would be entitled, but the latter claimed to be entitled to recover the difference between 4s. and 2s. & 9d. a pair. Held that they were not entitled to recover the difference. *Horne v. Midland Ry.* 42 L. J. C. P. 59, L. R. 8 C, P. 131; *Collard v. S. E. Ry.* 30 L. J. Ex. 393. *Davies v. L. & N. W. Ry.* 4 Jur. (N. S.) 1303. *Duckham v. G. W. Ry.* 80 L.T.974

(2) Late-delivery of samples—Loss of bargain:—On the 6th June C delivered at a booking office in London, samples to be carried by the Midland Railway to C; no directions were given to as to the mode of carriage and the goods were sent by goods train at the ordinary rate. The samples were packed in a box, on the top of which was a special printed label, "Traveller's goods, deliver immediately" and underneath was written the address of the consignee. The goods not being delivered before the evening of the 8th June, although they might reasonably have been delivered on the 7th, C sued the company to recover one guinea paid by them to their traveller for his expenses at the usual rate of one guinea a day, for which time he was delayed at C by the non-receipt of the goods.—Held that there was no special contract between the parties nor was the merely labelling

the box as "Traveller's goods" sufficient notice to the company of the purpose for which the goods were sent so as to make that purpose common knowledge to both parties or in any way to affect the company with special notice of the fact so as to make particular damages recoverable against them. *Candy v. Midland Ry.* 38 L. T. 226; *G. W. Ry. v. Redmayne* L. R. 1 C. P. 329; nor can a plaintiff recover damages in respect of loss of customers who ceased to employ him in consequence of the delay in delivering parcels. *Mann v. General Steam Navigation Co.* 4 W. R. 234; nor for wages of workmen or the loss of profit. *Le peintur. v. S. E. Ry.* 2 L. T. 170. *Hales v. L. & N. W. Ry.* 32 L. J. Q. B. 292; *Gie v. L. & Y. Ry.* 30 L. J. Ex. 11; *Wilson v. L. & Y. Ry.* 30 L. J. C. P. 232; nor for the loss of bargain between the plaintiff and the consignee. If goods are delivered too late by a carrier, the owner ought instantly to sell at market price, and realise his loss, the difference between the price he obtains by the sale at that time and that which he would have obtained is the only measure of damages. *Simmons v. S. E. Ry.* 7 Jur (N.S.) 849; Nor can the loss of market by the non-arrival of goods in time being purely accidental be taken into account. *Howes v. S. E. Ry. Co.* 54 L. J. Q. B. 174; *Mad. Ry. Co. v. Govindrao* 21 Mad. 172; nor is a purchaser entitled to more than the amount of interest on the purchase money paid by him for the goods which he does not receive. *Abdul Razak v. Agent B. N. W. Ry.* 38 Ind. Cas. 1039; 3 O. L. J. 737.

(3) **Change of mode of conveyance is a breach of contract:**—Where a Ry. Co. has promised to perform the conveyance in a certain manner with an attendant right to take advantage of certain stipulations made in their favour, they cannot put upon the consignor a mode of conveyance which he has not contracted for, yet retain in their own favour the stipulations referable to the agreed mode of conveyance only.

The plaintiff consigned fruit by passenger train from A to C on defts's Ry. at reduced rates and at owner's risk on the terms of the consignment note which relieved the defts "from all liability for, among other things, delay...except upon proof that such delay arose from wilful misconduct on the part of the defts' servants. The carriage from A to B was duly performed by passenger train, but from B to C it was performed by goods train. As a result the fruit arrived damaged, for which loss the plaintiff sought to recover damages from the defts, Held that the carriage of the fruit by passenger train was of the essence of the contract and after the fruit had been transferred to the goods train the contract was no longer being performed and the fruit was no longer being carried at owner's risk. The defts were therefore not relieved from liability by the conditions in the consignment note (*Foster v. G. W. Ry. Co.* (1904) 2 K. B. 306 distinguished) *Gunyon v. South Eastern & Chatham Ry. Companies & c.* (1915) 2 K. B. 370. 31 T. L. R. 367.

(4) **Evidence of unreasonable delay:**—(a) If the ordinary course of conveyance is departed from owing to the negligence of a company's servant. *Wern v. Eastern Ry. Co.* 1 L. T. (N. S.) 5; (b), or If a train arrives several hours after the proper time, it is *prima facie* evidence of unreasonable delay. *Robert-*

v. *Mid Ry. Co.* 25 W. R. 323; (c) So also the fact that the goods have not arrived as usual, owing to the company altering its time-tables without notice to the consignor, would be evidence of such delay. *Rollands v. Manchester S. & L. Ry. Co.* 15 Ir. C. L. 560.

Temporary or accidental detention from unexpected pressure of traffic is an incidental risk of which the consignor must to a certain extent take his chance. But the case is different, if causes or probable detention known or foreseen are not disclosed to him when his goods are accepted for carriage. *M Connachie v. G. N. of S. Ry.* 3 Sc. sess. Cas. 79.

(S). **No warranty that goods will arrive at particular hour:**—A contract by a railway company to carry goods by a given train which ordinarily arrives at a particular hour, does not amount to a warranty that it will so arrive although the company's servants be informed that the object of the sender requires that it should so arrive. *Lord v. Midland Ry. Co.* 36 L. J. C. P. 170.

(T). **Non-delivery, meaning of:**—Non-delivery of a consignment booked under an owner's Risk Note similar in terms of Risk Note B, meant non-delivery of the consignment as a whole, as contrasted with short delivery. *G. W. Ry. Co. v. Wills* (1919) A. C. (H. L.) 148.

(U). **Non-delivery-notice of purpose for which goods required-liability:**—The plaintiff was a merchant and was in the habit of going about to agricultural shows exhibiting samples of his goods. To exhibit them at New Castle, he had them delivered to an agent of a railway company who had a special office on the show ground at Birmingham for the purpose of forwarding goods that had been exhibited. The company's clerk supplied a blank consignment note. The plaintiff's agent filled up describing the goods as sundries, and the address as New Castle show ground, and endorsing it, "must be delivered, Monday certain." A conversation also took place with reference to the vital importance of having the goods at New Castle on Monday. The goods not having been delivered at New Castle on Monday, nor in time for the show, the plaintiff sued the company for the *Non-delivery*, claiming damages for his expenses and loss of time or profit. The company paid £ 10 into court to cover expenses and a verdict was entered for £ 20 additional in respect of loss of time or profit. Held that the verdict was right, the surrounding circumstances justifying the difference that the clerk knew the purpose for which the goods were wanted and made that the basis of the contract so as to render the company responsible for the damage naturally flowing from the *Non-delivery*. *Per Cockburn C. J.* "Whenever either the object of the sender is specially brought to the notice of the carrier or circumstances are known to the carrier from which the object may be taken to have been within the contemplation of both parties, damages may be recovered for the natural consequences of the failure of the object". *Simpson v. L. & N. W. Ry. Co.* 1 Q. B. D. 274. 45 L. J. Q. B. 182; *Watson v. Ambergate Ry.* 15 Jur. 448; *Jamison v. Midland Ry.* 59 L.T.426.

Where a Railway Company accepted goods for carriage with knowledge that they were for sale at a particular market, but the plaintiff knew that the company disclaimed all liability for loss of market, the plaintiff could not recover damages for loss of market through no negligence on company's part either in carriage or delivery. *Duckham v. G. W. Ry. Co.* 80 L. T. 774.

(2) **When non-delivery by a carrier is excused:**—The carrier is excused where there has been loss by the Act of God (*Nugent v. Smith* 1 C. P. D. 437), or by public enemies, or by reason of inherent defects, or where from the nature of the goods they are liable to peculiar risks, and the carrier has taken all proper precautions against them or where the right of stoppage in transit is duly exercised.—Story on Bailments pp. 574-576; 579-81; where an adverse title is set up, and notice is given to the carrier not to deliver, he will deliver to either party at his peril (*ibid* 582); *Sheridan v. New Quay Co.* 28 L. J. C. P. 58.

(U). **Notice of arrival of goods:**—Subject to the provisions of S. 56 of the Indian Railways Act (IX of 1890) notice of arrival will be sent when practicable but the railway administration will accept no responsibility for non-receipt thereof *Surutram v. G. I. P. Ry. Co.* 3 Bom. 96.

(V). **Advice note-effect of:**—An advice note sent by a railway company to a consignee of goods is not such a representation of the possession by them of the goods as will, without evidence of a custom to do so, entitle the consignee to act upon it in the way of reselling the goods; nor will it, in the absence of wilful misstatement or culpable negligence leading proximately to the consignee's suffering loss, estop the company in an action of trover from denying that they in fact ever had the goods, although the consignee had paid the carrier's charges in respect of them.

A contract cannot be implied from the sending of such an advice note to deliver to the consignee's order, so as to make the company liable for a breach in not delivering *Carr v. L. & N. W. Ry. Co.* 44 L. J. C. P. 109, L. R. 10 C. P. 307.

(W). **Computation of time for unloading:**—A Railway Act empowered the railway company to charge traders a reasonable sum by way of addition to the tonnage rate for, inter alia, the detention of trucks beyond such period as should be reasonably necessary for enabling the consignee to take delivery thereof.

Two truckloads of goods arrived by rail at the plaintiffs station on a Friday consigned to a certain person who gave notice to the plaintiffs to transfer the goods to the defendant. An advice note was sent on the same day to the defendant stating that demurrage would be charged at a specified rate per waggon per day or part of a day, if the goods were not unloaded and removed within forty-eight hours after the despatch of the notice, and that the defendant was to send for the goods not later than 6 p. m., and/or Saturdays not later than 1 p. m. The defendant received the notice on the Saturday, and the unloading of trucks was proceeded with up to 1 p. m., on that day and on Monday and was finished on Tuesday. The

claimed demurrage in respect of the detention of one of the trucks on Tuesday Held, that the receipt and acceptance of the advice note by the defendant constituted privity of contract between the plaintiffs and the defendant; that in calculating the period of forty-eight hours, the whole of each day, excluding Sunday, but including the time after 1 p. m., on Saturday, was to be counted and that the defendant was, therefore, liable for the demurrage claimed. *Larcschire & Yorkshire Ry. Co. v. Swann* (1916) 1 K. B. 263.

(X). **Contracting company not an agent of receiving company:—**A contract by a railway company to take a consignment of goods and deliver them at a station on some other railway does not in itself constitute the former company an agent for the latter. *Kalunam Meghraj v. The Madras Ry. Co.* 3 Mad. 240.

(Y). **Goods must be kept ready for delivery at destination:—**It is the duty of a railway company to keep goods which have reached the station of their destination ready there for delivery, until the consignee in the exercise of due diligence can call for and remove them, and it is the duty of the consignee to call for and remove them within a reasonable time, and therefore it was held that the arrival of the consignment at the station of destination having been proved, the burden of showing that the goods were ready for delivery to the plaintiff for a reasonable time after such arrival lay on the defendants, although no proof had been given of any application for delivery by the plaintiff within a reasonable time. *Surnthram Bhaya v. G. I. P. Ry. Co.* 3 Bom. 96; *Patscheider v. G. W. Ry. Co.* L. R. 3 Ex. Div. 153. When the carrier is ready to deliver and the delay in the delivery is attributable not to the carrier, but to the consignee of the goods, just as the carrier is entitled to a reasonable time within which to deliver, so the recipient of the goods is entitled to a reasonable time to demand and receive delivery. He cannot be expected to be present to receive delivery of goods, which arrive in the night time, or of which the arrival is uncertain, as of goods coming by sea or by a goods train, the time of arrival of which is liable to delay. On the other hand, he cannot, for his own convenience, or by his own laches, prolong the heavier liability of the carrier beyond a reasonable time. He should know when the goods may be expected to arrive. If he is not otherwise aware of it, it is the business of the consignor to inform him. His ignorance, at all events where the carrier has no means of communicating with him which was the case in the present instance cannot avail him in prolonging the liability of the carrier, as such, beyond a reasonable time. When once the consignee is *in mora*, by delaying to take away the goods beyond a reasonable time, the obligation of the carrier becomes that of an ordinary bailee, being confined to taking proper care of the goods as a warehouseman; he ceases to be liable in case of accident, *Chapman v. G. W. Ry. Co.* 5 Q. B. D. 278; 49 L. J. Q. B. 420. See also *Surendra Lal v. Secy. of State* (1917) 25 Cal. L. J. 37.

Delay in transit-loss by extraordinary cause:—The goods were delivered to a railway company for transmission, there was delay in transit which

contemplation of both the parties, damages may be recovered for the natural consequences of the failure of that object, *Simpson v. L. & N. W. Ry. Co.* 1 Q. B. D. 247; *Den of O'Gil Co. v. Caledonian Ry.* 5 F. 99 Ct. of Sess. *Fazal Illahi v. E. I. Ry.* (1921) 43 All. 623; *Madras Ry. v. Govindrao* 21 Mad. 172.

Damages that cannot reasonably be contemplated by both the parties as the natural consequences of a default in delivery are not recoverable. The loss of profits on a contract of which the defendant had not notice is clearly too remote. (*Hadley v. Baxendale* 23 L. J. Ex. 179). Therefore loss of profit which might have been earned by means of the article carried either alone or in conjunction with other things cannot be recovered as an ordinary consequence of delay in the absence of circumstances brought to the knowledge of the carrier, and of an undertaking on his part to bear the abnormal loss occasioned by his default. *Horne v. Mid Ry. Co.* 42 L. J. C. P. 59, (vide Macnamara p. 210). See also *France v. Gandit* L. R. 6 Q. B. 199; *Hinde v. Liddell* L. R. 10 Q. B. 265.

What must plff. prove to make company liable for undue delay.—To make the company liable for undue delay in the carriage of goods, plff must prove that the delay was wilful. Merely because there was delay in the carriage of goods, it could not be presumed that the delay was wilful. *Albuquerque v. S. I. Railway* (1922) 43 Mad. L. J. 90.

Measure of damages when goods are not received:—When a purchaser does not receive from the seller the goods purchased by him, he is only entitled by way of damages, to the amount of interest on the purchase money paid by him. *Abdul Razak v. Agent. B. N. Ry.* 38 Ind. Cas. 1039; 30. O. L. J. 737.

Whether consignee entitled to have the goods weighed &c. before the railway receipt is surrendered:—A railway administration is not required by law either to reweigh goods or to certify shortage at the time of delivery to the consignee. The refusal therefore of a railway Co. to reweigh goods before delivery does not justify a consignee to take delivery of the goods *Jankidas v. B. N. Ry.* 15 Cal. L. J. 211; 13 Ind. Cas. 509; 16 Cal. W. N. 356; *Kokamal v. G. I. P. Ry.* 21 Ind. Cas. 428; *Ramjash v. Ind. G. N. & Ry. Co.* 22 Cal. W. N. 310; 41 Ind. Cas. 387; *Jagunnath v. E. I. Ry.* 22 Cal. W. N. 902; 45 Ind. Cas. 933; *Surajmal v. B. N. Ry.* (1920) 58 Ind. Cas 200; *Brijulal v. B. N. Ry.* (1920) 58 Ind. Cas. 200 (Patna H. Ct. unreported); but the refusal of the company to reweigh does not in any way affect the right of the consignee who may weigh the goods himself and claim the price of the shortage in weight. *Ramjash v. Ind. G. N. & Ry. Co.* (Supra) and the company's servants are bound to afford the consignee reasonable facilities for so doing, and the consignee will be entitled to endorse on the back of the railway receipt a statement that he accepted delivery of the consignment as it stood, while taking note of the fact that its actual weight is only so much and not the full weight as given in the railway receipt. He would probably also be entitled to add to his endorsement any remark which he

might think proper to make for his own protection regarding the appearance of the consignment at the moment of his accepting delivery. *R. & K. Ry. v. Ismailkhan* 13 A. L. J. 417 at p. 421.

No damages allowed in case of goods in custody of carrier, seized by Officers of law:—If goods of a passenger are carried to its destination and there opened, examined and the contents removed by Officers of law, the company will not be held liable for any consequential damages arising therefrom. *Bosswell v. North British Railway* 4 F. 500 Ct. of Sess.

Goods remaining on company's premises for an unreasonable time after they were ready for delivery—Liability of the company how far:—Where there has been a delivery, actual or constructive, though the goods remain on the railway company's premises, they are no longer liable as carriers but only as warehousemen or on any special terms they may think proper to impose on the customer, and the contract is not affected by any of the statutes relating to carriers.

The consignee of the goods by rail is bound to take delivery thereof within a reasonable time. If by his own laches or for his own convenience he omits to do so, he cannot hold the Railway Co. liable for any loss or damage which may accrue. Different considerations would arise if there were any evidence to show an agreement on the part of the Ry. Co. to act as warehouseman; but the mere fact of the company charging demurrage would not necessarily give rise to such an implication. *Bengal & N. W. Ry. Co. v. Mulchand* (1920) 42 All 655 = 18 A. L. J. 764; 58 Ind. Cas. 1000. (*Chapman v. G. W. Ry. Co.* 5 Q. B. D. 278 referred to).

In *Shepherd v. Br. & Ex. Ry. Co.* 37 L. J. Ex. 113. Cattle delivered by the plff. to the defts arrived in London at noon on Sunday. If the defts' train had kept its time, it would have arrived at seven in the morning. As the police regulations prevented the cattle being driven through the streets till midnight, they were placed in pens at the station by the deft's servants, assisted by a man who was employed by the plff. After midnight when the plff's driver went to fetch them away, he found that two were dead; and the deft's servants would not let him take the rest away unless he signed a receipt for the whole number. Afterwards plff. himself came and took them away but in the meantime the Monday's market was lost. Held by Bramwell, B. and Channell B. that the deft's liability as carriers was over before the damage occurred—Contra *Martin, B.* that, at the time of the damage there had been no delivery of the cattle to the plff, and that the defts were responsible for the consequences of their servant's refusal to deliver.

In *Chapman v. G. W. Ry. Co.* 5 Q. B. D. 278 certain goods were consigned by the defts' railway to W., addressed to the plff, "to be left till called for." On their arrival at W. they were placed in the station warehouse to await their being called for. Two days afterwards, without default on the part of the defts, the

house was burnt down, and the pliff's goods were consumed by fire. Held that after the interval of time which the pliff has suffered to elapse since the arrival of the goods, the liability of the defts as common carriers in respect of the goods had ceased, and they had become mere warehousemen of them, and consequently the defts were not liable to an action for the loss of the goods, in the absence of any evidence on their part.

In that case Cockburn C. J. in delivering the judgment said "The question is, whether the goods in question are to be considered as having been in the custody of the defts as carriers, in which case the defts would be liable for the loss though not arising from any fault of theirs; as warehousemen, in which case they would be liable only for want of proper care. The question of where the liability of the carrier ceases, or, rather, becomes exchanged for that of an ordinary bailee for hire—is sometimes one of considerable nicety, and by no means easy of solution. The contract of the carrier being not only to carry but also to deliver, it follows that to a certain extent the custody of the goods as carrier must extend beyond, as well as precede, the period of their transit from the place of consignment to that of destination. First, there is in most instances, an interval between the receipt of the goods and their departure—sometimes one of considerable duration. Next there is the time which in most instances must necessarily intervene between their arrival at the place of destination, and the delivery to the consignee, unless the latter—which, however, is seldom the case, is on the spot to receive them on their arrival. Where this is not the case, some delay, often delay of some hours—as for instance, when goods arrive at night, or late on Saturday, or where the train consists of a number of trucks which take some time to unload—unavoidably occurs. *Chapman v. G. W. Ry. Co.* (supra). See also *Mitchell v. L. & Y. Ry. Co.* L.R. 10 Q.B. 236.

This view of the case receives support from the decision of the Court of Common Pleas in *Re Webb* (8 Taun 143), which, in principle, is quite analogous to the present case, though the facts are not precisely the same. There the defendants, the carriers, in order to obtain their exclusive custom, had agreed with the plaintiffs to store all goods arriving for them in the defts' warehouse free of charge till it suited the plaintiffs to take them away. A fire having accidentally broken out, and goods of the plaintiffs, which had been lying at the defendants' warehouse upwards of a month, having been destroyed, it was held that the goods having been in the keeping of the defendants for the convenience of the plaintiffs, the defendants were not liable for the loss.

"To be left till called for":—The words amount to no more than an intimation to the carrier that the goods are not to be delivered elsewhere, but will be fetched from the station. They are words which have long been in use, and had their origin in former times, when the carrier generally had his office in the town to which he carried, and was in the habit of delivering at the house or place of business of the person to whom goods were addressed. To prevent goods which

it better suited the convenience of the consignee to receive at the office of the carrier—more especially when he had no residence or office at the particular place—from being sent out for delivery, and, possibly, misdelivery, and to insure their being kept at the office of the carrier ready for delivery, they were specially so addressed. *Chapman v. G. W. Ry. Co.* 5 Q. B. D. 278; *Re Webb* 8 Taun 443.

Consequences of unreasonable refusal to take delivery—demurrage charges:—When a consignee unjustifiably refuses to take delivery of goods, he cannot claim the price thereof from the common carrier, but on the contrary, becomes liable for demurrage charges for the period during which the goods remain in the custody of the common carrier.

But no demurrage can be charged for the period subsequent to a notice given to the consignee that the goods will be sold away at auction if he fails to remove them. *Ranjash Agarwal v. Indian G. S. N. Co. Ltd.* 41 Ind. Cas. 387; 22 Cal. W. Notes. 310.

Amount of time allowed to consignee to take delivery—its proper place:—The amount of time a railway company ought to allow a consignee to unload and remove a consignment depends upon the varying circumstances of each particular case. *Coxon v. N. E. Ry. Co.* 4 Ry. & Ca. Tr. Ca. 284; *Mitchell v. Lanc & York Ry. Co.* L. R. 10 Q. B. D. 256; *Bourne v. Catliff* 8 Scott N. R. 604; *Surutram v. G. I. P. Ry.* 3 Bom. 96.

Delivery to be at a proper place:—It is the duty of the carrier to provide a proper place for delivery; and if he neglects to provide such a place he is liable for a loss arising from such neglect. *Rooth v. N. E. Ry. Co.* L. R. 2 Ex. 173; see also 2 Hillard 382 & 557.

Delivery to common carrier at consignor's risk is no delivery to consignee.—Where a vendor delivers the goods sold, to a common carrier at his risk for being carried to the vendee, there is no delivery of the goods to the vendee, though the carrier has been chosen by the vendee himself. *Winter v. Way.* 1. Mad. H. C. 200.

Consignee bound to examine goods before delivery—grant of clear receipt, no bar to a claim for damages:—When the goods are delivered by a railway company at the proper place and at the proper time, the consignee is bound to examine them and ascertain whether they are in good order, and if he does not intimate objection, it will be presumed that they were delivered in good order. *Stewart v. North British Ry. Co.* 5 Sess. Ca. 426; see Macnamara on Carriers etc., p. 237. But this case is not an authority for the proposition that if a consignee takes delivery and grants a clear receipt he loses his remedy even if he is able to establish conclusively that the goods were damaged or partially lost while in transit. The contrary view was adopted in *Johnston & Sons v. Dove* 3 Rettie 202, where it was ruled that if a consignee of goods (which as a matter of fact have been damaged

in transit though such damage is not visible at first sight) grants a clear receipt, accepts delivery, and breaks bulk without judicious inspection or notice to the carrier, he does not lose his right to compensation; the fact that he has granted a receipt is an element in the proof of damage, but is no bar to the claim. A similar view was taken in *Pearcy v. Pleyer* 10 Rottie 564; 20 S. L. R. 376.

In *Pakey v. Russel* 6 Martin N. S. (La) 58 it was ruled that although acceptance of the goods by the consignee without objection and with knowledge of their defective condition precludes recovery for damages thereto (*Manro v. Ship Baltic* 1 Martin O. S. 194; *Mary v. Warner* 17 La. Ann. 34) yet acceptance will not operate as a waiver of objection for damage not apparent. A similar view was taken in the case of the *Elmira v. Shepherd* 8 Blatchford 341, where it was ruled that the claim for compensation was not lost though the consignee had granted a clear receipt, accepted delivery and sold the goods. See also *Mears v. New York Ry. Co.* 5 L. R. A. 884; *South Ry. Co. v. Ashford* 28 South 732; *E. I. Ry. Co. v. Sisfel* 16 Cal. W. N. 329 = 39 Cal. 311 = 14 Cal. L. J. 472.

Railway company not bound to open the goods and examine them before giving delivery at destination:—The railway company is not bound to open the consignment and examine it before delivery and it is not a wrongful act on the part of the railway company to refuse to give delivery in the way required by the plaintiff and they are not liable to him for any damages, *Jwalaprasad v. G. I. P. Ry.* 11 A. L. J. 772, referred to (*Koka Mall v. G. I. P. Ry.* 11 A. L. J. 775, (unreported at the footnote of the above case). *Secy of State v. Shamlat* (1922) 67 Ind. Cas. 312; *Shri Gangoji Cotton Mills v. E. I. Ry.* (1922) 22 A. L. J. 761.

Demurrage whether payable pending inquiry:—The Ry. Co. is not entitled to charge demurrage for the period during which the investigation into the consignee's claim is being made, because till the company is satisfied of the *bona fides* of the claim made by him, the goods cannot be said to be ready for delivery *E. I. Ry. v. Bhagwandas* (1922) 1 Patna 15; (*B. B. & C. I. Ry. v. Jacob Elias* 18 Bom. 231 followed).

Delivery of wrong goods—damages—liability:—C and B were in the habit of sending empty casks by defendants' railway to plaintiff which plaintiff filled with ketchup and returned; that defendants by their agents and servants knew the purpose for which the casks were sent to the plaintiff; that defendants negligently and improperly delivered to the plaintiff as C and B's casks, certain other casks not belonging to C and B, and which had contained turpentine; that plaintiff not knowing or having reasonable means of knowing that the empty casks delivered were not C and B's, filled with ketchup, which was spoiled.—Held, that there was no duty on the part of the defendants which could give rise to a cause of action, and therefore they were not liable. *Cunnington v. G. N. Ry.* 49 L. T. 392; *N. & Y. Ry. Co. & anr v. Mac Millan* (1918) 88 L. J. (K. B.) 601.

Refusal to take delivery of goods.

(a). **Before reweighment:**—A consignee of goods by railway in the absence of proof that any portion of the goods handed to the company by his consignor were missing when he was offered delivery, is not entitled to refuse to accept delivery merely because the weight of the goods is less than that entered in the bill of lading, where there is an express clause in it that the company do not guarantee and would not be responsible for the accuracy of the weight therein entered and where the entry of the weight was made by estimation after weighing only a very small portion of the goods. *Mohan Moti v. B. B. & C. I. Ry. Co.* 1882 P.J.70.

There is nothing in law or equity which can entitle the plaintiff to claim reweighment before delivery. The company according to their own Rule 5 accept the weight declared in the railway receipt as being correct for the purpose of calculating freight charges only, but it did not admit a contract to carry and deliver the specific exact weight shown in the receipt. The figures entered in the railway receipt are of the greatest evidential value in case of loss, but that they are not to be taken as the proof of any contractual right to claim reweighment by the railway upon delivery. *Manager Morvi Ry. Tulsidas* 18 K. L. R. 371, (contra—10 K. L. R. 219 and 16 K. L. R. 155). *Jankidas v. B. N. Ry. Co.* 15 Cal. L. J. 211.

But a contrary view has been taken by the Allahabad High Court in *Rohilkhand & Kumaon Ry. v. Ismailkhan* 17 All L. J. 417 at p. 421 where it has been held that the consignee is entitled to have the goods weighed then and there before he surrenders the railway receipt and when this has been done, he is entitled to endorse as to the weight &c. and any other remark which he might think proper to make for his own protection.

(b). **On ground of shortness in number of pieces:**—The consignees of two Bundles of cow-hides which had been carried by a railway company having refused to take delivery on the ground of shortness in the number of pieces, the railway company pleaded that they were not indebted, as they had contracted to carry such and such a number of bundles and had done so. The bills of lading showed so many bundles said to contain such a number of pieces. The company contested plaintiff's enumeration of pieces. Held, that the circumstances that the company charges freight by the piece, and not by bundles, and accepts the enumeration showing that each bundle contains 10 pieces, is not sufficient to fix the company with liability to account for the hides by the piece. Held, also that the company was not liable, there being no evidence that the bundles had been broken or the hides counted to pieces. *Schlaffer P. & Co. v. The Eastern Bengal Ry. Co.* 21 W. R. 380.

Claim for shortage:—The shortage, should be noted in the delivery book of the company or if the signature of the consignee was taken first and delivery effected afterwards (and the consignee had no opportunity to enter the shortage), then the matter should at once be reported to the Railway Authorities. *Shah Tarachand Nathubhai v. B. B. & C. I. Ry. Co.* 10 K. L. R. 307.

in transit though such damage is not visible at first sight) grants a clear receipt, accepts delivery, and breaks bulk without judicious inspection or notice to the carrier, he does not lose his right to compensation; the fact that he has granted a receipt is an element in the proof of damage, but is no bar to the claim. A similar view was taken in *Pacey v. Player* 10 Kettie 564; 20 S. L. R. 376.

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Railway company not bound to open the goods and examine them before giving delivery at destination:—The railway company is not bound to open the consignment and examine it before delivery and it is not a wrongful act on the part of the railway company to refuse to give delivery in the way required by the plaintiff and they are not liable to him for any damages. *Jairajprasad v. G. I. P. Ry.* 11 A. L. J. 772, referred to (*Koka Mall v. G. I. P. Ry.* 11 A. L. J. 775, (unreported at the footnote of the above case). *Secy of State v. Sham Lal* (1922) 67 Ind. Cas. 312; *Shri Gangaji Cotton Mills v. E. I. Ry.* (1922) 22 A. L. J. 761.

Demurrage whether payable pending inquiry:—The Ry. Co. is not entitled to charge demurrage for the period during which the investigation into the consignee's claim is being made, because till the company is satisfied of the *bona fides* of the claim made by him, the goods cannot be said to be ready for delivery *E. I. Ry. v. Bhagvandas* (1922) 1 Patna 15; (*B. B. & C. I. Ry. v. Jacob Elias* 18 Bom. 231 followed).

Delivery of wrong goods—damage—liability:—C and B were in the habit of sending empty casks by defendants' railway to plaintiff which plaintiff filled with ketchup and returned; that defendants by their agents and servants knew the purpose for which the casks were sent to the plaintiff; that defendants negligently and improperly delivered to the plaintiff as C and B's casks, certain other casks not belonging to C and B, and which had contained turpentine; that plaintiff not knowing or having reasonable means of knowing that the empty casks delivered were not C and B's, filled with ketchup, which was spoiled.—Held, that there was no duty on the part of the defendants which could give rise to a cause of action, and therefore they were not liable. *Cunnington v. G. N. Ry.* 49 L. T. 392; *N. & Y. Ry. Co. & anr v. Mac Micall* (1918) 88 L. J. (K. B.) 601.

Refusal to take delivery of goods.

(a). **Before reweighment:**—A consignee of goods by railway in the absence of proof that any portion of the goods handed to the company by his consignor were missing when he was offered delivery, is not entitled to refuse to accept delivery merely because the weight of the goods is less than that entered in the bill of lading, where there is an express clause in it that the company do not guarantee and would not be responsible for the accuracy of the weight therein entered and where the entry of the weight was made by estimation after weighing only a very small portion of the goods, *Mohan Moti v. B. B. & C. I. Ry. Co.* 1882 P.J. 70.

There is nothing in law or equity which can entitle the plaintiff to claim reweighment before delivery. The company according to their own Rule 5 accept the weight declared in the railway receipt as being correct for the purpose of calculating freight charges only, but it did not admit a contract to carry and deliver the specific exact weight shown in the receipt. The figures entered in the railway receipt are of the greatest evidential value in case of loss, but that they are not to be taken as the proof of any contractual right to claim reweighment by the railway upon delivery. *Manager Morvi Ry. Tulsidas* 18 K. L. R. 371, (contra—10 K. L. R. 219 and 16 K. L. R. 155). *Jankidas v. B. N. Ry. Co.* 15 Cal. L. J. 211.

But a contrary view has been taken by the Allahabad High Court in *Rohilkhand & Kumaon Ry. v. Ismailkhan* 17 All L. J. 417 at p. 421 where it has been held that the consignee is entitled to have the goods weighed then and there before he surrenders the railway receipt and when this has been done, he is entitled to endorse as to the weight &c. and any other remark which he might think proper to make for his own protection.

(b). **On ground of shortness in number of pieces:**—The consignees of two Bundles of cow-hides which had been carried by a railway company having refused to take delivery on the ground of shortness in the number of pieces, the railway company pleaded that they were not indebted, as they had contracted to carry such and such a number of bundles and had done so. The bills of lading showed so many bundles said to contain such a number of pieces. The company contested plaintiff's enumeration of pieces. Held, that the circumstances that the company charges freight by the piece, and not by bundles, and accepts the enumeration showing that each bundle contains 10 pieces, is not sufficient to fix the company with liability to account for the hides by the piece. Held, also that the company was not liable, there being no evidence that the bundles had been broken or the hides counted to pieces, *Schlaepfer P. & Co. v. The Eastern Bengal Ry. Co.* 21 W. R. 380.

Claim for shortage.—The shortage, should be noted in the delivery book of the company or if the signature of the consignee was taken first and delivery effected afterwards (and the consignee had no opportunity to enter the shortage), then the matter should at once be reported to the Railway Authorities, *Shah Tarachand Nathubhai v. B. B. & C. I. Ry. Co.* 10 K. L. R. 307.

(c). On ground of Company's servants refusing to weigh and certify shortage:—A railway company is not bound by law either to reweigh goods or certify shortage at the time of delivery to the consignee. Therefore the refusal of a railway Co. to reweigh goods before delivery does not justify a consignee in refusing to take delivery of goods. *Surajmal Marwari v. Agent Bengal Nagpur Ry. Co.* (1920) 58 Ind. Cas. 200; *Baij Nath v. B. N. Ry.* (1920) 58 Ind. Cas. 200; (Patna H. Ct. unreported) *Jankidas v. B. N. Ry.* 13 Ind. Cas. 509; 16 Cal. W. N. 356; *Jagannath v. E. I. Ry.* 45 Ind. Cas. 933; 22 Cal. W. N. 902; *Ramjash Agarwala v. I. G. S. N. Ry. Co.* 41 Ind. Cas. 387; 22 Cal. W. N. 310; *Koka Mal v. G. I. P. Ry.* 21 Ind. Cas. 428; 11 A. L. J. 775n; *Shri Gangaji Cotton Mills Co. v. E. I. Railway* (1922) 22 A. L. J. 761.

(d). On ground of company declining to give open delivery:—Where goods are consigned for carriage by railway, at railway risk, and at destination are found to be short in weight, the fact that the railway Co. declines to give 'open delivery', of the consignment affords no cause of action to the consignee to maintain a suit for the value of the goods, there being no provision in the Railways Act to make it incumbent upon a railway company to make open delivery. *Secretary of state for India in Council v. Shamlal Dethinandan* (1922) 67 Ind. Cas. 312 (*Lahore H. Ct.*) *Jwaliprasad v. G. I. P. Ry.* 21 Ind. Cas. 418; 11 A. L. J. 772; *Koka Mal v. G. I. P. Ry.* 11 A. L. J. 775n; *Shri Gangaji Cotton Mills Co. v. E. I. Ry.* (1922) 22 A. L. J. 761.

(e). On ground of Company's servants refusing to make a note about the condition of goods on their register:—The refusal by the railway servants to make a note about the condition of the goods on their register did not amount to wrongful refusal to deliver the goods and the pliffs were not entitled to maintain the suit on the ground of wrongful conversion. *Shri Gangaji Cotton Mills v. E. I. Ry.* (1922) 22 A. L. J. 761. *Koka Mal v. G. I. P. Ry.* 11 A. L. J. 775n; 21 Ind. Cas. 428.

(f). Consignor's agent changing condition of consignment:—Plaintiff's agent A handed in a consignment of 250 bags of cocoanuts at D.G. to be forwarded to the plaintiff at S. When the cocoanuts were loaded in the railway waggon, N, the agent of A, removed the gunny bags and loaded the cocoanuts loose in one waggon. The railway receipt as well as the label on the waggon described the consignment as 250 bags of cocoanuts. When the consignment reached its destination, plaintiff declined to take its delivery on the ground that the consignment was not theirs, since it was not contained in 250 bags as described in the receipt. The railway company then sold cocoanuts to meet wharfage, freight, &c. Plaintiff thereupon sued the railway company for recovering the damages sustained by them on account of the non-delivery of the consignment. Held:—(1) that the contract was between N and the company and assuming that it was a term of it that the goods should be carried in-bags and delivered to the plaintiff, N, himself by his action modified that term, and as between him and the company, he cannot

hold the latter liable for a breach of it. (2) That so far as the plaintiff was concerned, the company never entered into any contract with him and the plaintiff could not sue him, whatever cause of action he might have against his agent. *G. I. P. Ry. Co. v. Sahabram* 5 Bom. L. R. 953.

(g). **Carrier contracts with the owner of the goods:**—In the absence of special circumstances, the carrier's contract is with the person in whom the property in the goods is vested. Thus where goods are delivered to a carrier for a purchaser under a valid contract for sale, the consignee is the proper person to sue the carrier, whether he has nominated him or not. *Dutton v. Solomonson* 3 B. & P. 582, but if there is no valid contract between the consignor and consignee, the consignor is the person to sue, and the consignee cannot sue, though he may have appointed the carrier. *Coombs v. Bristol & Exeter Ry. Co.*, 3 H. & N. 510; so also when the goods are sent on approval, the consignor is the person to sue. *Swain v. Shepherd* 1 M. & Rob. 223.

Where the goods are delivered to the carrier to be carried to a certain place for a consignee whose name is disclosed, the inference being that the contract of carriage is between the carrier and the consignee. *L. & N. W. Ry. Co. v. Bartlett* 31 L. J. Ex. 92.

(h). **Effect of refusal by the consignee to accept delivery:**—If goods are tendered by the carrier in proper time, place and manner, to the owner or consignee and refused by him after the expiration of a further reasonable time, during which the consignee, by the exercise of ordinary diligence, could either claim or remove them. (*G. W. Ry. v. Crouch* 3 H. & N. 183), the carrier is relieved from his liability as an insurer and thereafter is only responsible to the owner as an involuntary bailee of the goods and as such is bound to act with no more than that reasonable care and caution which a man of ordinary prudence would display in the custody of his own goods of a similar character or description. *Heugh v. L. & N. W. Ry.* L. R. 5 Ex. 51.

If the consignee on receiving a notice removes a small portion of the goods and gives directions to have the trucks containing the remainder placed on a siding near his own premises and after the same being done, takes no further steps. After some time the goods were emptied on a place on the side of the line and were there damaged. Upon an action for the loss, it was held that the notice to remove the goods was *constructive delivery* and consequently all duty by the company as common carriers was at an end. *Chapman v. G. W. Ry.* 5 Q. B. D. 278; But it is an actionable breach of duty, sounding in damages, if a carrier, upon a consignee's refusal to accept goods, immediately returns them to the consignor without affording the consignee time to reconsider his refusal. *G. W. Ry. v. Crouch* 3 H. & N. 183; But from the time of the refusal to accept delivery, the consignee becomes liable for all necessary and reasonable charges connected with the preservation of the chattel or thing. *Taf. Val. Ry. Co. v. Gilt* 2 E. & B. 873; *G. N. Ry. Co. v. Swaffield* L. R. 9 Ex. 132.

There is, however, no absolute legal duty, where goods have been tendered by a carrier to a consignee and refused by him, for the carrier to give notice of such refusal to the consignor, although he is apparently bound to do that which is reasonable, having regard to all the circumstances. *Hudson v. Bazendale* 2 H. & N. 575; 27 L. J. Ex. 93 (Wyatt Paine on Bailments p. 326-327).

(i). **Carrier liable for deficiency on reweighment of goods:**—If a load of goods weighing a certain weight be delivered to a common carrier to be carried for hire, and the goods on arrival at its destination is deficient in weight, there is a *prima facie* presumption of negligence on the part of the carrier which the latter must rebut by showing that the deficiency of weight arose from causes over which he had no control. *Hawkes v. Smith Car. & M.* 72. (Addition on contract p. 950).

Rules for determining nature of action, whether in tort or contract:—In order to determine whether an action taken by the plaintiff to recover damages for loss or injury to goods is in tort and not in contract, it is necessary for the plaintiff to show that the conduct of the carrier in relation to the loss amounted to a wilful conversion of the goods. *Pontyfer v. Midland Ry. Co.* 3 Q. B. D. 23. But if the offence alleged against the carrier is no more than a breach of his duty as a common carrier to carry safely goods delivered to him as such for hire, the action is "in contract" *Fleming v. M. S. & L. Ry.* 4 Q. B. D. 81.—*contra*—*Taithe v. G. W. Ry. Co.* 2 El. & El. 844. *Pazzi v. Shipton* 1 W. & W. H. 624.

The station master is agent to deliver goods:—The station master is an agent for the railway company to deliver goods, and if he assents to some other mode of delivery than the usual one he will bind the company thereby. (Per Field, J. in *Wright v. L. & N. W. Ry. Co.* 44 L. J. Q. B. 120).

Station master not an agent to enter into special contract:—The plaintiff, in good faith relying upon information supplied to him by the station master of a certain railway station as to the rate of freight to be charged on certain goods, consigned the goods for carriage by the railway. The rate quoted was a special concession rate which did not apply to the plaintiff's consignment. At destination the undercharge was discovered and delivery was refused except on payment of the proper freight. The plaintiff refused to pay and sued the company for damages for non-delivery. It was held that the contract made with the plaintiff was by a person who had no authority on behalf of the defendant company to enter into a special contract viz. a contract to carry goods on concession rates which did not apply to the case and that the company was not liable for the breach. *Gorin v. G. I. P. Ry.* (1917) 14 All. Law, Journal 601.

Calling back of railway receipts is for protection of railway:—The note in the receipt to the effect that the goods will not be delivered unless the receipt be produced, is only for the protection of the Railway. It does not hold out a right to the mercantile world as against the railway to sue for loss

that may be caused by not calling back the receipts when delivering the goods. *Madras & Southern Mahratta Ry. v. Haridas Bannali Das.* 41 Mad. 871. 35 Mad. L. J. 35.

Risk-Notes-Special contract-limiting liability.

What are risk notes:—Risk note is a document containing terms of a special agreement whereby the consignor, paying a lower freight than he would otherwise be bound to pay, "in consideration of such lower charge, agrees and undertakes to hold the railway company harmless and free from all responsibility for loss, destruction or deterioration of, or damage to the goods &c. *E. I. Ry. Co. v. Bunyad Ali* 18 All. 42. (3 N. W. P. 200 distinguished) *Toonyaram v. E. I. Ry.* 30 Cal. 257; *Mulji v. S. M. Ry.* 14 Mad. L. J. 396 referred to; such a contract is legal and valid within the terms of sec. 72. *E. I. Ry. v. Bunyad Ali* 18 All. 42. and is not opposed to public policy. *Kalidas v. E. I. Ry. Co.* (1917) 21 Cal. W. N. 815. *Albuquerque v. S. I. Railway* (1922) 43 Mad. L. J. 90.

Companies protected under Risk-Notes—onus on plaintiff—when:—When goods are carried by the railway company under the terms of a "Risk Note", by which the railway company is not liable for any loss, destruction or deterioration of, or damage to the goods before, during or after transit, the railway company is not liable for failure to deliver the goods, if they are lost in transit. *If the consignor should assert that the goods were not lost, but were delivered to a wrong person, the onus lay upon him to prove his case.* The onus is on the plaintiff (consignor) to show that the circumstances under which the goods disappeared were not such as to amount to "loss" within the meaning of the "Risk Note". The railway company is not bound to show by affirmative evidence that it has lost the goods. *Mulji v. S. M. Ry. Co.* 14 Mad. L. J. 396; *Hiralal v. Bengal N. Ry. Co.* 2 N. L. R. 125. *Tipanna v. S. M. Ry. Co.* 17 Bom. 417; *Moheshwar v. Carter* 10 Cal. 210.

Before, during and after transit:—Where the goods consigned by the plaintiff through a railway company were damaged at a station beyond the one for which they were consigned, there having been no negligence whatever on the part of the company, Held, that the company was protected under the risk note as the words "before, during and after transit" occurring therein covers the whole period from the time of delivery to the company upto re-delivery by it. *Arunachalam chattiari v. Madras Ry. Co.* 33 Mad. 120; 6 Mad. L. T. 292; *Stat v. Fagg* 4 R. R. 407. *Arratoon v. E. I. Ry.* 38 Ind. Cas. 143.

Signed:—When the Law says "Signed" it means the writing of the name of the person who signs it either by his own hand or by the hand of an agent who must be disclosed and have authority. *Mahabharsh v. The Secretary of State for India* (1916) 20 Cal. W. N. 685.

Risk-Note how to be signed to bind consignor:—The provision of

S. 72 (2) requiring risk-notes to be signed by or on behalf of the person sending or delivering goods to a railway administration, should be exactly carried out.

Where the person who delivered the goods signed not his own name, but the name of the owner of the goods, there was not a sufficient compliance with the requirements of Section 72 cl. 2. *Mahabharsh v. The Secretary of State for India* (1916) 20 Cal. W. N. 685.

A risk-note not signed by the consignor or on his behalf but filled up by a railway clerk himself cannot relieve the company of the responsibility which lies under provisions of S. 151 of the contract Act. *Arnison v. E. I. Ry.* 33. Ind. Cas. 143.

Attestation:—The word "attested" means the witnessing of the actual execution of the document by the person purporting to execute it. *Amroff v. Rachaya* (1919) 22 Bom. L. R. 86; (*Shama v. Abdul Kadir* 14 Bom. L. R. 1034 followed). *Rai Ganga. v. Ishri prasad* 20 Bom. L. R. 587. Knowledge of the contents of the deed ought not to be inferred from the mere fact of the attestation, though an attestation may take place in circumstances which would show that the witness did in fact know of the contents of the deed. *Pandurang v. Markandya* (1922) 24 Bom. L. R. 557.

Risk note from A.—shortage—Burden of proof:—Certain "Bakoos" of tobacco were consigned from A to B. under Risk note form. A which contained an entry that the consignment was in bad condition and was liable to damage, leakage and wastage. As the bakoos were old and torn and the contents were wet the consignor agreed to hold the Ry. Co. harmless and free from all responsibility for the condition in which the goods may be delivered to the consignee at destination and for any loss arising from the same. On delivery, as there was shortage in weight and the Co. being sued it was held that the burden lay on the plff and not on the Ry. Co. under S. 76 of the Ry. Act to prove that the shortage was due to pilfering by the Ry. Co's servant. *Parbhool v. Bengal North Western Ry. & B. B. & C. I. Ry.* (1922) 65 Ind. Cas. 583; 4 U. P. L. R. (A) 2.

Risk Note forms B. & H. not opposed to public policy:—*Risk Note forms B & H.* under which the railway Co. takes liability only when there is a loss of a complete package due to wilful negligence of their staff or theft by their servants is not opposed to public policy, *Kalidas v. E. I. Ry.* 21 Cal. W. N. 815; *G. I. P. Ry. v. Kanayalal* 14 N. L. R. 122; 48 Ind. Cas. 294; *Albuquerque v. South Indian Railway* (1922) 43 Mad. L. J. 90; *E. I. Ry. v. Nilkanth Ry.* 41 Cal. 576; *Jhunnilal v. B. B. & C. I. Ry.* 14 A. L. J. 396; *E. I. Ry. v. Nathumal* 39 All. 418.

Liability of railway for total loss—not liable for shortage in contents:—If injury is caused to the contents of the package or parcel it does not amount to loss within the meaning of the exception in the Risk Note B. and that the

consignee could recover only if the package or parcel is entirely deprived of its value; otherwise the railway company is not liable. *Mad. & S. M. Ry. v. Muttai Subba Rao* (1920) 55 Ind. Cas. 754; 28 M. L. T. 49. Where several tins of ghee consigned for carriage by defendant company, upon special terms as to rates and liability contained in Risk Note Form B, were found on arrival to have been cut open and there was a shortage in contents; Held—The company is not liable because all the packages have arrived though with a deficiency in the contents of some of them. *E. J. Ry. Co. v. Shivprasad Bhakat* 17 Cal. W. N. 529 (referred to, 10 Cal. 210; 18 All. 42; 30 Cal. 257; 17 Bom. 417 and *Mulji v. S. M. Railway* 14 Mad. L. J. 396) *E. J. Ry. Co. v. Nilkanthrai* 41 Cal. 576.

Onus of proof on person who asserts that his case falls within one of the exceptions in Risk Notes forms B. & H. :—It is for the person who says that his case falls within one of the exceptions mentioned in the risk note form B or H has to prove his assertion; viz wilful neglect of its servants, transport agents &c. employed by them, and in the absence of proof that the loss was caused by one of the risks undertaken by the owner, the Court is not bound to presume that the loss was due to one of the reasons covered by the exception. These Risk Notes save the railway Company from liability for loss, destruction &c. or damage to the consignee from any cause whatever *except for the loss* due either to the *wilful neglect* of the railway administration or to theft by or to the wilful neglect of its servants &c.

The liability of the railway company is therefore not the general liability imposed on common carriers or imposed by s. 72 of the Railways Act. Under this section the Company was entitled to contract themselves out of the provisions of this Act if the form of the contract was approved by the G. G. in Council and there is nothing illegal in the consignor, in consideration of the reduced rate charged agreeing to hold the company liable only on certain specified contingencies. In such cases the onus of proving the fact necessary to bring the company within the terms of the contract and the liability imposed by it will be on the consignor. *Albuquerque v. S. I. Ry.* (1922) 43 Mad. L. J. 90. *Jumnadhar v. Burma Railway Co.* (1921) 64 Ind. Cas. 395. 10 L. B. R. 354. 13 Burma L. Times 190. *Ghelubhai v. E. I. Ry.* 23 Bom. L. R. 525; 45 Bom. 1201; *B. B. & C. I. Ry. v. Dayaram* (1922) 46 Bom. 11; 23 Bom. L. R. 583; 64 Ind. Cas. 4; *E. I. Ry. v. Nilkanth Roy* 41 Cal. 576. *E. I. Ry. v. Nathmal* 39 All 418; 15 A. L. J. 321; 39 Ind. Cas. 130; *B. B. & C. I. Ry. v. Ranchhodlal* 43 Bom. 769; 21 Bom. L. R. 779; 52 Ind. Cas. 516; *Jhunnimal v. B. B. & C. I. Ry.* 14 A. L. J. 396. *E. I. Ry. v. Kamak Behari* 22 Cal. W. N. 622. 44 Ind. Cas. 691; *G. I. P. Ry. v. Kanayakal* 48 Ind. Cas. 294. *G. I. P. Shobatram v. Bengal N. W. Ry.* 16 Cal. W. N. 766; *Hazarilal v. Secy of State* (1922) 65 Ind. Cas. 342; *Toonyaram v. E. I. Ry.* 30 Cal. 257; *B. B. & C. I. Ry. v. Ambalal Shevaktlal* Bom. H. Ct. 11-11-1909 (unreported). *G. I. P. v. Jitanram* (1922) 67 Ind. Cas. 664 (Patna H. Ct.) While it is different in :

of a carrier. Its liability is that of an insurer subject to certain exceptions under S. 6 of the Carrier's Act III of 1865. The onus is as a matter of course, on the common carriers, even in a case covered by a special contract, to disprove negligence as the loss of the goods is *prima facie* evidence of negligence or criminal act of the carrier, his servants or agents. *India General Steam Navigation Co. v. Bhagwanchandra Paul*. 40 Cal. 716.

Loss of contents of packages cannot mean loss of complete packages:—Loss of the contents of the packages could not be said to be loss of "complete packages" within the meaning of the terms of the Risk Note Form II. *East India Ry. Co. v. Nilkanthrai* 19 Cal. L. J. 142; 41 Cal. 576.

Risk Notes B. & H.:—Railway Company cannot escape liability by merely admitting loss:—In a suit to recover damages for short delivery of goods consigned under Risk-Note B or H, the railway Co. cannot escape liability by merely admitting the loss, but it must lead evidence to prove how the loss has occurred and to offer some reasonable explanation to escape liability and the plaintiff has to prove the facts specified in the Risk Note. *Junnadhar v. Burma Ry. Co.* (1921) 64 Ind. Cas. 395; *Ghatabhai v. E. I. Ry.* (1921) 23 Bom. L. R. 525; 45 Bom. 1201; *Central India Sfg. & Wg. Co. v. G. I. P. Ry.* (1922) 24 Bom. L. R. 272.

Construction of Risk Note B. & H.—Loss:—Often it is contended that the word "Loss" in the exemption clause of the Risk Note Form B includes "*Destruction, deterioration and damage*". The Risk Note is not a very carefully drafted one and it may be possible for the Government of India to scrutinize its language on some future occasion. But as it stands at present the word *loss* has a meaning distinct from the above three words, "*destruction, deterioration and damage*". All the four words are placed *seriatim* in the earlier portion. But when it comes to imposing liability, notwithstanding the contract to the contrary, the draftsman has used the word "*loss*" alone and has left out the words "*destruction, deterioration and damage*." It seems this must have been done on purpose by the draftsman. Reasonable meaning can be attached to the Note as it stands by imputing to the draftsman the intention to hold the company liable only for the loss of a complete consignment of one or more complete packages and by exempting the company from liability where there has been destruction, deterioration and damage to such a complete consignment of one or more complete packages. But construing the language of the Note as it stands, I can give it only the meaning which I have indicated above.—Per *Sheshagiri Aiyar J.* in *Madras & Southern Maratha Ry. v. Mattai Subba Rao* (1920) 55 Ind. Cas. 754 at p. 759=(1920) M. W. N. 198=8 M. L. J. 360; 28 Mad. L. T. 49.

Meaning of the term "loss":—The Bombay and Calcutta High Courts have held that if the outer cover which encloses a parcel is delivered, the article cannot be said to have been lost by the company; but it seems that it is too narrow a construction upon the expression "*loss*". The term *loss* should be con-

strued as including cases where the article consigned is lost to the consignor *as such article*. If the goods entrusted to the care of the company 'ceases to have any resemblance to the goods of the description which they undertook to carry, the company should be held to have lost the goods. In *Asfar & Co. v. Blundell and Clogan v. London Assurance Co.* 5 M. & S. 447. Lord Esher gave this meaning of the word "loss". The nature of a thing is not necessarily altered because the thing itself has been damaged; wheat or rice may be damaged, but may still remain the things dealt with as wheat or rice *in business*. But if the nature of the thing is altered and it becomes for business purposes something else, so that it is not dealt with by business people as the thing which it originally was, the question for determination is, whether the thing insured, the original article of commerce, has become a total loss. If it is so changed in its nature, as to become an *unmerchable thing*, which no buyer would buy and no honest seller would sell, then there is a total loss. In *Hearn v. London & S. W. Ry. Co.* (supra). Barok Park has expressed himself to the same effect; and therefore if it is proved that the article has lost its identity as such it would amount to loss. *M. & S. M. Ry. Co. v. Muttai Subba Rao* (1920) 55 Ind. Cas. 754; 38 Mad. L. J. 360; (1920) Mad. W. N. 198; 43 Mad. 360. (*E. I. Ry. Co. v. Nilkanth Ry.* 41 Cal. 576 & *B. B. & C. I. Ry. v. Ambalal* Ind. Ry. Cas. 48 dissented from). See also notes on the word "loss" in Ss. 75 & 77.

Merchantability of Goods:—That is to say that the goods shall be immediately saleable under the description by which they are known in the market.

A large consignment of Motor horns was sent from Paris to London. When they arrived the horns were found to be dented and scratched, some badly polished and some badly finished and some defective &c. and some tubes required polishing or other work to make them merchantable and therefore they were held to be unmerchable. Goods can be said to be merchantable when they could without more have been disposed of reasonably and properly by the buyers as dealers in horns to any customer who wanted them. *Jackson v. Rotas Motor and Cycle Co.* (1910) 2 K. B. 937; *Bristol Tramways v. First Motors* (1910) 2 K. B. 831.

A bale of a 1000 pieces of piece goods of which 9/10ths are damaged, however slightly is radically unmerchable and that a seller can't say to the buyer, you must take these goods, and I will make you an allowance in respect of 9/10ths of these because they are damaged. *Mills & Co. v. V. A. A. R. Firm.* (1922) 43 Mad Law Journal 208.

Wilful neglect:—A person is said to be guilty of wilful neglect when he intentionally, and of set purpose, does something which ought either to be done in a different manner, or not at all or omits to do something which ought to be done.

A loss is said to be due to wilful neglect when such neglect is either the sole effective cause of the loss or is so connected with it as to be materially

tributing to it. *Daulatram v. Secy of State* 9 S. L. R. 177; 17 Cr. L. J. 79; 33 Ind. Cas. 551; See also p. 228.

What facts to be proved when Risk Note B. or H. is held:—When a plff sues a railway for compensation for loss of goods consigned under a Risk Note in Form B. or H, he must *allege and prove*, not merely that the Railway have committed a breach of the ordinary contract of bailment, but that they have been guilty of wilful neglect and that he has suffered loss as a consequence of such neglect. There is no authority whatever for asserting that from the bare fact that goods have been lost or damaged, while in charge of a carrier, it can be presumed that the carrier has been guilty of wilful neglect. There could not be such presumption without transgressing the limits of reasonable inference. It is the recognised rule of the English Courts that when wilful misconduct is alleged against a carrier it must be proved by the person alleging it (Halsbury's Laws of England Vol. IV p. 31). This is a rule based on ordinary experience of what is probable, and is applicable to this country as much as to England. It would be impossible to place on the Railway the burden of proving the negative without completely nullifying the intention and effect of the special contract. *Daulatram v. Secy of State* 9 S. L. R. 177; 17 Cr. L. J. 79; (1916) 32 Ind. Cas. 551. *E. I. Ry. v. Kanak Behari* 22 Cal. W. N. 622 (Such a case would be guided by the terms of the special contract embodied in the Risk Note B and not by Secs. 151, 152 & 161 of the Contract Act or other provisions of the Ry. Act)

Under what circumstances wilful misconduct of company's servants may be inferred:—In *M. Queen v. G. W. Ry.* (1875) L. R. 10 Q. B. 569 the plff delivered to the Company a large case of valuable drawings to be carried to London. The Company's servants put this case into a truck, in which also was placed a quantity of other goods, chiefly empty boxes. The truck was placed on a siding to await the departure for London of the train of which it was to form part. This siding was about a mile in length. There were two level crossings over it, and it was easily accessible to any person from almost any direction. Large numbers of persons not connected with the railway company in any way constantly used the crossings, and even used other parts of the premises as a convenient thoroughfare. On arrival of the train in London the case was missed, and it was not heard of again. The plff sued the Company for the value of the drawings, and the company claimed the protection of the Act. It was admitted on behalf of the defendants, that the case must have been stolen whilst in the truck upon the siding, but no explanation was given as to how it was stolen. The Court held that it is not enough to show that it is more likely that the thief was a servant of the Company than another person; evidence must be given establishing a *prima facie* case against the servants of the company. *It is not enough to show that the Company's servants had better opportunity than others of stealing the property, if other persons had abundant opportunity of so doing.*

When a plff alleges wilful misconduct on the part of the Company's servants, the burden is upon him to prove such misconduct. Where, however, misconduct, such as larceny, on the part of some person unknown is proved, and the plff can show that no member of the outside public, but only servants of the Company, had effective access to the goods while in transit, it is proper to infer that the misconduct in question was committed by some one or more of the company's servants. *H. C. Smith Ltd. v. Mid. Ry. Co.* (1919) 88 L. J. B. 868. *The Central India S. & W. Co. v. G. I. P. Ry.* (1922) 24 Bom. L. R. 272; a contrary view, however, has been taken in *H. C. Smith Ltd. v. G. W. Ry.* (1922) 1 A. C. 178 that the refusal of the defts to account for the loss of the goods was not evidence which justified the Court in inferring that the loss arose from the wilful misconduct of the defts' servants.

Whether selling goods without notice constitutes wilful neglect:—

The plffs delivered certain bags of potatoes to the B. B. & C. I. Ry. to be carried to a station on the G. I. P. Ry. under a Risk Note Form H. The bags were duly carried to the junction station of the two railways and were put into an empty wagon belonging to the G. I. P. Ry. They should have been transhipped at another station, but it was not done and they were carried to some other station, where they remained unnoticed for some time. Thereafter they were sent to their destination and as they were found to be in a stinking condition, they were sold by public auction without any notice to the plaintiffs or their agents &c. on a suit by the plffs it was held that unless it is shown that the Railway authorities *intentionally or purposely omitted to tranship the bags*, it is impossible to hold that the Railway authorities were guilty of *wilful neglect* within the meaning of the Risk-Note. It would be a misuse of the language to describe the action of the Railway authorities in selling the goods without notice as wilful neglect. *Junni Lal & Anr v. B. B. & C. I. Ry.* 14 All. L. J. 396; 35 Ind. Cas. 265.

Consignee to set forth particulars constituting wilful neglect and to substantiate them:—A plaintiff, in order to succeed in an action for compensation, for the loss or deterioration &c. of the goods consigned to the railway must set forth all the particulars constituting the wilful neglect or default of the Railway Company, which occasioned the loss or deterioration &c. as is required by O. VI. r. 4 of the Civ. Pro. Code. The plff is further required to substantiate by evidence the case of wilful neglect or default on the part of the Railway Co. and its servants. *G. I. P. Ry. v. Jitanram Nirmatram* (1922) 67 Ind. Cas. 664.

Precautions necessary to be taken against thefts in running trains:—

Where plff's goods were stolen from a running goods train in open day light and it was found that the railway carried the goods in unlocked waggons, without taking any measures to guard the same against theft, in spite of the knowledge of the frequency of thefts from the running trains:—The Ry. Adm. were held liable for the value of the goods as no prudent man would leave valuable goods stored in an unlocked warehouse situated in an out of the way place, and be

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content to leave it altogether unguarded, if he was aware of the presence of the thieves in the neighbourhood. The Ry. Adm. could not be absolved from all obligation to watch the goods in their charge merely because, the warehouse in which they were stored was in a state of rapid movement. *Nikoomal Lakshmi v. Secy of State* 10 S. L. R. 196 = 39 Ind. Cas. 904. The practice of placing seals on the wagons though it may discourage petty pilfering on the part of the staff is quite inadequate as a precaution against a determined thief. Either the wagons must be locked with a sound lock or else the train must be patrolled at all stations by a sufficient force of police and the stations themselves must be lighted with sufficient brilliancy to make a theft impossible. *Manager Muzi Railway v. Gulabchand* 25 K. L. R. 27.

Theft in a running train:—A railway Co. is ordinarily protected against a theft in a running train in respect of a consignment booked under Risk-Note or B; but it is open to the pliff to prove that the theft did not occur in a running train or that the theft was brought about by the Company's servants. *B. B. & C. I. Ry. v. Sakarchand* (1922) 24 Bom. L. R. 737; Robbery from a running train is nothing else than an ordinary theft in a running train *E. I. Ry. v. Nuthmal* 39 All. 418, 39 Ind. Cas. 130.

Theft by servant of carrier:—A firm of tea merchants sent a consignment note to their wharfingers requesting them to deliver chests of tea to a Ry. Co. to carry and deliver them to the consignee. A carter in the service of the Ry. Co. who was at the time absent from work on sick leave presented himself at the wharf in a uniform and with a horse and cart of the Ry. Co. and demanded and received the tea which he then converted to his own use. The Co. afterwards prosecuted him to conviction for larceny laying the property in the tea in themselves. In an action by the tea merchants for breach of duty as common carriers, the Ry. Co. in the absence of negligence, was held not liable, in as much as, though they had ratified the defacto possession of the tea by the carter, they had not ratified any possession under a contract of carriage. Ratification does not rest upon estoppel. It need not be communicated to the party alleging it. Ratification is a unilateral act of the will, namely the approval after the event of the assumption of an authority which did not exist at the time. It may be expressed in words or implied from or involved in acts. *Harisons & Crossfield Ltd. v. London N. W. Ry. Co.* (1917) 2 K. B. 755.

Risk Note Form C, Onus on company to prove non-liability for loss of goods:—The company is responsible for safe carriage of goods except so far as they have protected themselves from responsibility by the terms of the "Risk Note" but it does not absolve them from all liability or enable them to impose on the plaintiff the burden of proving that the loss or non-delivery of the goods was caused by some default (not covered by the "Risk Note") for which the company is liable.

It is for the company in the first instance to show by evidence that the non-delivery is owing to the risk incidental to the goods having been sent in open wagons. *Santokrai v. E. I. Ry. Co.*, 2 N. W. P. H. C. Rep. 200; (dist. in 18 All. 42).

Owner's risk:—A parcel of sheep-skins which had been delivered by the plaintiff to the defendants for carriage from P to W arrived at their destination in a damaged condition owing to their having been packed in a truck with wood chips which had become entangled in the wool. The plaintiff wrote to the station master at W, complaining of the damage and asking him to prevent a recurrence of injury. He received a reply saying "I have called our P people not to use the kind of litter you object to in the future." Subsequently plaintiff sent a second parcel of sheep skins from P to W on the terms of the "Owner's Risk Note" whereby he relieved the defendants from liability for damage except upon proof that it arose, from wilful misconduct on the part of the defendant's servants. This parcel, like the first, arrived damaged from being put into trucks containing wood chips. Held:—That, in the absence of proof that the persons who *actually loaded the goods* in the trucks or who *superintended their loading* had notice that the mode of packing employed was likely to be injurious to the goods, there was no evidence of wilful misconduct on the part of the defendant's servants; the mere fact that some other official of the defendants had that notice was not sufficient. *Forder v. G. W. Ry. Co.* (1905) 2 K. B. 532.

The words "at owner's risk" or "solely at owner's risks" do not by themselves confer a right to immunity where goods have been lost or damaged in the course of the carriage, and where the mischief has arisen solely or in part through the negligence of the carrier or his servants. *Per Kennedy J.* in *Airschel & Mayor v. G. E. Ry. Co.* 96 L. T. R. p. 151.

A railway company carrying goods at "owner's risk rate" on condition that they shall not be liable "in respect of loss or detention" are liable for an intentional refusal to deliver in virtue of a claim for lien. *Gordon v. G. W. Ry. Co.* 8 Q. B. D. 44.

The plaintiff despatched certain goods by the E. I. Ry. Co. for carriage to A and signed a special contract, in conformity with the form approved by G. G. in Council, holding "the company harmless and free from all responsibility in regard to any loss, &c. . . . from any cause whatever before, during and after transit over the said railway or other railway lines working in connection therewith". The goods were short delivered and the plaintiff brought a suit to recover the value;—Held, (Per Garth C. J., Prinsep J. and Wilson J.) that the railway company could not be held liable to account to the consignee for any loss from any cause whatever during the whole time that the goods were under their charge in as much the plaintiff had entered into a special contract to hold them harmless, (Per O'Kinealy J.) That it was doubtful whether Ss. 151 & 161 of the Indian Contract Act applied to carriers by railway, *Moheshwar Das v. Carter* 10 Cal. 210; *Md. Ry. Co. v. Govind Rao* 21 Mad. 172.

Special contract—carrier's liability:—A common carrier, in order to avoid liability (otherwise than by the Act of God or the King's enemies) for loss of or damage to the goods committed to him must show that his liability is limited by statute, or by any lawful special contract, or that the loss or damage arises from inherent vice in or natural deterioration of the object carried or from negligence on the part of the bailor. *Pick v. North Staffordshire Ry. Co.* 20 H. L. C. 473; 32 L. J. Q. B. 246; *Wilkinson v. L. & Y. Ry. Co.* (1907) 2 K. B. 222; *Hirschel v. G. E. Ry.* 96 L. T. 147.

The common law liability of a common carrier cannot be varied by any public notice:—The common law liability of a common carrier cannot be varied by any public notice, but it may be varied by a special contract with the consignor in respect of the goods carried. *Zunn v. S. E. Ry. Co.* L. R. 4 Q. B. 539; a ticket or paper with printed conditions upon it of which the consignor has notice whether signed by him or not is a special contract and not a public notice within the meaning of the Act *G. N. Ry. Co. v. Morville* 21 L. J. Q. B. 319; *Walker v. York & N. Midland Ry. Co.* 23 L. J. C. P. 125. *Hopper v. Furness Ry. Co.* (1907) 23 T. L. R. 451.

Special contract must not be opposed to public policy nor its conditions repugnant to positive law:—A bailee may limit his liability by conditions provided these conditions are not repugnant to public policy or positive law. A condition that he will not be responsible for loss occasioned by the negligence of his servants is certainly not repugnant to positive law nor a condition repugnant to public policy. *Post Master of Bareilly v. Earle* 3 N. W. P. 195; *R. V. S. v. B. I. S. N. Co.* 18 M. L. J. 497, but he cannot limit his responsibility as a carrier in respect of ordinary goods so as not to be liable for loss or injury caused by gross negligence or misconduct, though possibly he may, with the consent of Government, limit his liability by contract or notice for loss arising otherwise than by gross neglect. *E. I. Ry. Co. v. Jordan* 4 B. L. R. O. C. 97; 14 W. R. O. C. 11; *Assam Tea Company v. E. I. Ry. Co.* Bourke O. C. 39; *Shaw v. G. W. Ry. Co.* (1894) 1 Q. B. 373; (a loss by theft by a company's servant without negligence on the part of the company); *Austin v. M. S. & L. Ry. Co.* 16 Q. B. 600; 20 L. J. Q. B. 440; *Chippendale v. Lancashire & Yorkshire Ry. Co.* 21 L. J. Q. B. 22; *Carr v. L. & Y. Ry. Co.* 7 Ex. 707; 21 L. J. Ex. 261.

According to English Law a carrier might, by special notice, make a contract limiting his responsibility even in cases of gross negligence, misconduct or fraud on the part of his servants, *Pick v. Staffordshire Ry. Co.* 32 L. J. Q. B. 246.

The words "In all cases and under all circumstances," appearing in bills of lading though very wide and general as possible will not cover the case of negligence, which must be expressly provided for. *Sheikh Mahamad v. B. I. S. N. Co.* 32 Mad. 95.

S. 151 of the Contract Act lays down the absolute minimum of care required of bailees. Having regard to the provisions of S. 152, which allows a bailee to undertake

a higher responsibility, and in the absence of provisions allowing a bailee to limit such liability, the amount of care required by S. 151 is irreducible by any contract between the parties.

A contract limiting such liability will be opposed to public policy and void under S. 23 of the Contract Act as it will be against the interests of the mercantile community and not necessary in the interest of the shipowners. Sheik Mohamad v. The British India Steam Navigation Coy. 32. Mad. 95. See also British India Steam Navigation v. Ratanji 22 Bom. 184. Price & Co. v. Union Lighterage Co. (1903, 1 K. B. 750) Rathbone Brothers & Co. v. Madever Sons & Co. (1903, 2 K. B. 378) Nelson Line (Liverpool) Ltd. v. James Nelson & Sons Ltd. (1908) A. C. 16 Jellicoe v. The British India Steam Navigation Coy. 10 Cal. 489, The Irrawady Flotilla Coy. v. Bhagwandas 18 Cal. 620.

Construction of condition in consignment note:—The vendor of goods delivered the goods to the defendant Ry. company for carriage to the buyers upon the terms of a consignment note which contained the following conditions:—"All goods delivered to the company will be received and held by them subject to a lien for money due to them for the carriage of and other charges upon such goods and also to a general lien for any other moneys due to them from the owners of such goods upon any account and in case any such lien is not satisfied within a reasonable time from the date upon which the company first gave notice to the owners of the goods of the exercise of the same, the goods may be sold by the company by auction or otherwise and the proceeds of sale applied to the satisfaction of every such lien and expenses." The vendor had paid all freight and charges in respect of the carriage of the goods. While the goods were still in possession of the defendant company, as carriers, he gave notice of stoppage in transitu to them, he having heard of buyer's insolvency. The buyers were indebted to the deft. Co. to a large amount which did not include any freight or other charges in respect of the goods. The deft. Co., claimed that under the terms of the consignment note they had a lien as against him (the vendor) in respect of the amount due from the buyers:—Held that the condition did not confer on the railway company a right to assert a general lien on the goods in respect of the debt of the buyers in priority to the vendor's right of stoppage in transitu. *United States Steel Products Co. v. G. W. Ry. Co.* (1916) 1 A. C. 189, 31 T. L. R. 439; 113 L. T. 886; *G. W. Ry. v. Defen Tinplate Co.* (1919) 2 K. B. 177.

Effect of conditions printed on tickets:—Some companies issue their tickets generally with the words "This ticket is issued subject to the regulations and conditions stated in the company's time-tables and bills". Others print the words "for conditions see back" on the face of the ticket, and refer to their regulations, bills, time-tables, &c., on the back. Others, again, merely have the word "See Back" on the face of the ticket, with similar references on the back.

In all cases, however, companies intend to incorporate in the contract made by issuing a ticket the conditions which they publish governing that contract.

Such a form constitutes the offer of the party who tenders it. If the form is accepted without objection to whom it is tendered, this person is, as a general rule, bound by its contents, and his act amounts to an acceptance of the offer made to him, whether he reads the document or otherwise informs himself of its contents or not. *Walkins. v. Ry mill* 10 Q. B. D. 178; *Zuns v. S. E. Ry. Co.* L. R. 4 Q. B. 539; *Harris v. G. W. Ry. Co.* 1 Q. B. D. 515; *Marriott v. Yewant Bros.* (1909) 2 K. B. 987. (Special conditions held binding on the passenger even where the loss was caused by the felonious acts of the deft's servants. *Foley v. G. N. Ry. Co.* (1910) 45 L. J. 191.

"If the bailor and bailee agree that the goods shall be deposited on other terms than those implied by law, the duty of the bailee, and consequently his responsibility, is determined by the terms on which both parties have agreed, and it is a clear law that where there is a writing, into which the terms of an agreement are reduced, the terms are to be regulated by that writing. And though one of the parties may not have read the writing, yet, in general, he is bound to the other by these terms, upon the ground that, by assenting to the contract thus reduced to writing, he represents to the other side that he has made himself acquainted with the contents of that writing and assents thereto, and so induces the other side to act upon that representation by entering into the contract with him, and the owner is consequently precluded thereafter from denying that he did make himself acquainted with those terms * * * But the preclusion only exists if each party in respect of the other means his representation to be acted upon, and it is acted upon accordingly * * * or if, whatever a man's real intentions may be, he so conducts himself that a reasonable man would take the representation to be true, and believe that it was meant that he should act upon it, and did act upon it as true." (Per Blackburn J. in *Harris v. G. W. Ry. Co.* at pp. 529-530). "If however, the bailor at the time when he accepted the ticket, either by actual examination of it or by reason of previous experience, or from any other cause, was aware of the terms or purport or effect of the indorsed conditions, it can hardly be doubted that he becomes bound by them. And he would be equally bound if he was aware or had good reason to believe that there were upon the tickets statements intended to affect the relative rights of himself and the company, but intentionally or negligently abstained from ascertaining whether there were any such, or from making himself acquainted with their purport." *Parker v. S. E. Ry. Co.* 2 C. P. D. 416 at pp. 424, 425, 426. *Richardson v. Rowntree* (1894) A. C. 217; 63 L. J. Q. B. 283; *Hooper v. Furness Ry. Co.* 23 T. L. R. 451; *Henderson v. Stevenson* L. R. 2 H. L. Sc. App. 470; *Van Toll v. S. E. Ry. Co.* 31 L. J. C. P. 241; *Acton v. Castle Mail Packet Co.* 73 L. T. 158; *Pratt v. S. E. Ry. Co.* 1 Q. B. 718; 66 L. J. Q. B. 418; *Grand Trunk Ry. Co. of Canada v. Robinson* (1915) 19 Cal. W. N. 905 (P. C.)

By the English Law applicable to common carriers, the common carrier may enter into any contract so as to protect himself, but he can only do so by clear, definite and unambiguous words. *Haji Ismail v. The Company of the Messageries Maritimes of France* 28 Mad. 400.

Conditions inside the cover:—If a ticket is in the form of a book with coupons, the passenger must be taken to have a notice of conditions inside the cover though not referred to on the cover. *Burke v. S. E. Ry. Co.* 5 C. P. D. 1.

Conditions in railway pass:—A man, while travelling on the appellant's railway in charge of cattle, was killed by the negligence of the appellant's servants. The cattle were consigned by the employers of the deceased man under the appellant's form of live stock contract, which provided that if a man was allowed to travel in charge of the cattle at less than full fare, the appellants were to be under no liability for his death, injury or damage whether caused by negligence or otherwise. A pass at less than full fare was issued to the deceased, who placed his signature below conditions printed thereon. One of the conditions was that the appellants should be entirely free from liability for any damage, injury or loss to the deceased, whether caused by negligence or otherwise. The form of the live stock contract had been approved by the Railway Board,

In an action against the company it was held that the deceased must be taken to have assented to the conditions in the pass. *Canadian Pacific Ry. Co. v. Parent* (1917) 2 A. C. 195.

Clauses of exemption from liability after goods are free of ship's tackle, validity of:—A provision in a charter-party to the effect that "In all cases and under all circumstances, the liability of the company (of ship-owners) shall absolutely cease when the goods are free of the ship's tackle and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee," affords complete protection to the ship-owners against all losses in respect of goods arising from any cause at any time after the goods are free of the ship's tackle, whether the cause of the loss be (a) the sinking of the boats which conveyed the goods from the ship to the shore, a sinking occasioned by the negligent over-loading of the boats by the ship-owners' landing agents or (b) by the misfeasance and fraud of their landing agents. Such a clause, according to English Law is not opposed to public policy and is valid; and Section 23 of the Indian Contract Act has no application. *Kariadan Kumberv. B. I. S. N. Co. Ltd.* 38 Mad. 941. (*Sheikh Mohamad v. B. I. S. N. Co.* 32 Mad. 95; *Chartered Bank of I. A. & China v. B. I. S. N. Co. Ltd.* (1909) A. C. 369 followed.)

Protection words must be clear and not ambiguous:—If a ship-man puts in a clause in a bill of lading which he intends for his protection and which is ambiguous and not clear, then it does not operate to protect him. *Bank of Australia v. Clan Line Steamers Ltd.* (1916) 1 K. B. 39 C. A.

Meaning of reasonable condition:—A condition is reasonable which reduces a railway company's liability to a minimum if it is coupled with compensating advantages to the customer (such as cheapness of carriage), and the latter has the alternative of getting rid of the condition by paying a reasonably higher rate. *Manc. Sheff & Line Ry. Co. v. Brown* 53 L. J. Q. B. (11. L.) 124. A condition in the consignment note that the company should not be held liable for the loss of goods unless a claim was made in writing within 14 days is reasonable and it formed part of the special contract and was binding on the plff. *Charles W. & Co. v. L. & N. W. Ry. Co.* (1921) 1 K. B. 582.

Test to determine whether conditions are reasonable or unreasonable:—The reasonableness or unreasonableness of the condition will materially depend upon (1) The nature of the articles conveyed, (2) The degree of risk attendant upon their conveyance, (3) The rate of charge made, (4) and whether the railway company was bound by the common law or by statute to carry the articles on being paid the customary hire, (5) or whether it was in its power to reject them altogether and refuse to carry them upon any terms. *Pardington v. South Wales Ry. Co.* 26 L. J. Ex. 105.

The following conditions have been held to be reasonable:—

(1). The company would not be common carriers of dogs nor will they receive dogs for carriage except on the condition that they should not be responsible beyond the sum of £ 2 unless a higher value was declared and percentage paid. *Williams v. Mid Ry. Co.* C. A. (1908) 1 K. B. 252;—contra—*Dickinson v. G. N. Ry. Co.* 56 L. J. Q. B. 111; 18 Q. B. D. 176.

A condition in a cloak room-ticket that the Railway would not be liable for the loss of the articles exceeding 5 £ in value unless they are specially declared and an extra charge paid is reasonable *Gibaud v. G. E. Ry. Co.* (1921) 2 K. B. 426.

(2). "That the company shall not be responsible under any circumstances for loss of market, or for other loss or injury arising from delay or detention of trains, exposure to weather, stowage; from any cause whatever other than gross neglect or fraud." *Beal v. South Devon Ry. Co.*; 29 L. J. Ex. 441; 5. H. & N. 875; affirmed in Ex. Ch. 12 W. R. 1115; 11 L. T. N. S. 184; *White v. G. W. Ry. Co.* 26 L. J. C. P. 158; *Lord v. Mid. Ry. Co.* 36 L. J. C. P. 170.

(3). "The company is to be held free from all risk or responsibility in respect of any loss or damage arising in the loading or unloading, from suffocation, or from being trampled on, bruised or otherwise injured in transit, from fire, or from any other cause whatever. The company is not to be held responsible for carriage or delivery within any certain or definite time, nor in time of any particular market." (In answer to a claim for suffocated and injured cattle sent by rail). *Pardington v. South Wales Ry. Co.* 26 L. J. Ex. 105; but see *McManus v. Lanc. & York Ry. Co.* 28 L. J. Ex. 353; and *Rooth v. N. E. Ry. Co.* 36 L. J. Ex. 83.

(4). "The company will not be answerable for the loss of goods untruly or incorrectly described. *Lewis v. G. W. Ry. Co.* 29 L. J. Ex. 425.

(5). "No claim for deficiency, damage or detention will be allowed unless made within 3 days after the delivery of the goods, nor for loss unless made within 7 days of the time they should have been delivered." *Lewis v. G. W. Ry. Co.* (Supra); But in *Murphy v. M. G. W. Ry. Co. of Ireland* (1903) 2. Ir. 5, it was held that such a condition could not be considered reasonable.

(6). "Goods conveyed at special rates must be loaded and unloaded by the owners or their agents and the company will not be responsible for any risk of stowage, loss or damage, however caused, nor for discrepancy as to either quantity, number or weight, or for the condition of articles so carried, nor for detention or delay in the conveying or delivery of them however caused." *Simons v. G. W. Ry. Co.* 26 L. J. C. P. 25.

(7). If a railway company charge two rates for the conveyance of certain articles, one the ordinary rate when they take the ordinary liability of a carrier, and the other a reduced rate, in which case they make it a condition of a carriage, that the sender relieves them of all liability for loss or damage except upon proof that such loss or damage arose from wilful misconduct on the part of the company's servants the condition relieving the company when goods are carried at the lower rate is "Just and reasonable"—*Lewis v. G. W. Ry. Co.* 47 L. J. Q. B. 131; *Robinson v. G. W. Ry. Co.*, 35 L. J. C. P. 123.

(8). "(a) The company will not be answerable for the loss, or detention of or damage to, wrappers of packages of any description charged by the company as empties, (b) nor in respect of goods destined for places beyond the limits of the company's railway; and as respects the company, their responsibility will cease when such goods shall have been delivered to another in the usual course for further conveyance". Held that the second condition was reasonable. *Aldridge v. G. W. Ry. Co.* 33 L. J. C. P. 161.

(9). A stipulation that horses &c, should be carried at owner's risk. *McCane v. L. & N. W. Ry. Co.* 7 H. & N. 477; *Harrison v. L. B. & S. C. Ry.* 2 B. & S. 122.

(10). That the company is not liable "for any loss of or damage to any goods whatever by reason of accidental or unavoidable delays in transit or otherwise". *Madras Ry. Co. v. Govind Rao* 21 Mad. 172.

(11). A notice on the face of the ticket that the company only received articles upon the conditions printed on the back of the ticket and one of these conditions was that the company would not be responsible for the loss of any article left for custody when the value of it exceeded £ 5 unless at the time of delivery the true value was declared and a special rate paid. *Lyons v. Caledonian Railway* (1909) S. C. 1185 Ct. of Sess.

(12). A condition that the defendants should not be responsible for any loss, damage, injury • • of or to passengers or their luggage or effects • • by whatso-

ever, cause or in whatever manner * * * occasioned, and whether arising from the Act of God, King's enemies * * * thieves (whether on board or not) accidents to or by machinery, boilers or steam, unseaworthiness of the steamer even existing at the time of sailing, or from any act, neglect or default whatsoever of the pilot, master, mariners or other servants of the steamer":—Held that the condition protected the defts from liability to make good a loss occasioned by the felonious act of their servants. *Marriott v. Yeoward Brothers*. (1909) 2 K. B. 987.

(13). A condition on face of cheap week-end ticket that it was available for return on the following Sunday or Monday. Held that passenger could not return on the Saturday with such ticket, *G. E. Ry. Co. v. Kirkley* (1914) Sol. Jo. 239.

(14). The condition imposed on the carriage of unpacked articles in the consignment note was a just and reasonable condition. *Sutcliffe v. G. W. Ry. Co.* C. A. 478; 1 K. B. (1910) 478.

The following conditions have been held to be unreasonable:—

(1) "Every stipulation or condition professing to exempt a railway company from liability for its own negligence or misconduct, or that of its servants or agents." *Peck v. N. Staff Ry. Co.* 10 H. L. Cas. 473; 32 L. J. Q. B. 241; *Doolan v. Midland Ry. Co.* 2 App. Cas. 792; *Rooth v. N. E. Ry. Co.* 36 L. J. Ex. 83; *Western Electric Co. v. G. E. Ry. Co.* (1914) 3 K. B. 324; 109 L. T. 46.

(2) "That the company will not be accountable for the loss, or damage of any package insufficiently or improperly packed, marked, or described or containing a variety of articles liable by breakage to damage each other." *Simons v. G. W. Ry. Co.* 26 L. J. C. P. 25; *Garton v. Bristol & Exeter Ry. Co.* 30 L. J. Q. B. 273.

(3) "The baggage shall remain in charge of a guard provided by the troops the company accepting no responsibility." *Martin v. G. I. P. Ry.* 37 L. J. Ex. 27.

(4) "This ticket is issued subject to the owner's undertaking all risks of conveyance, loading and unloading whatsoever as the company will not be responsible for any injury or damage however caused." *McManus v. L. & Y. Ry. Co.* 28 L. J. Ex. 353; *Gregory v. West Midland Ry. Co.* 33 L. J. Ex. 155.

(5) "A condition not to be liable for delay however caused" is unreasonable. *Kirby v. G. W. Ry. Co.* 18 L. T. N. S. 658; *Allday v. G. W. Ry. Co.* 34 L. J. Q. B. 5.

(6) "The company will not be answerable for the loss or detention of or damage to wrappers or packages of any description charged by the company as empties." *Aldridge v. G. W. Ry. Co.* 33 L. J. C. P. 161.

(7) "That the company will not be responsible for any loss or injury to any horse, cattle, sheep or other animals, in the receiving, forwarding or delivering, if such damage be occasioned by the kicking, plunging or restiveness of the animal." *Gill v. S. M. Ry. Co.* 42 L. J. Q. B. 89.

ever, cause or in whatever manner * * * occasioned, and whether arising from the Act of God, King's enemies * * * thieves (whether on board or not) accidents to or by machinery, boilers or steam, unseaworthiness of the steamer even existing at the time of sailing, or from any act, neglect or default whatsoever of the pilot, master, mariners or other servants of the steamer":—Held that the condition protected the defendants from liability to make good a loss occasioned by the felonious act of their servants. *Marriott v. Yeoward Brothers*. (1909) 2 K. B. 987.

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(8) A railway company will not be liable "in any case" for loss or damage to a horse or dog above certain specified value unless the same is declared. *Ashenden v. London & Brighton Ry. Co.* 42 L. T. 586—contra—*Williams v. Mid. Ry. Co.* C. A. (1908) 1 K. B. 252.

(9) A set of conditions in a consignment note is unreasonable and void, if any part of it is unreasonable *Kirby v. G. W. Ry. Co.* (Supra); *Llyod v. Limerick Waterford Ry. Co.* 15 Ir. C. L. Rep. 37.

(10) Rules framed by the railway company under Ss. 47 and 54 (Act IX of 1890) whereby goods were to stand at owner's risk and the railway company were not to be liable therefor, until a receipt had been granted by them, were inconsistent with the Act and unreasonable. *Jalamsing v. The Secretary State for India* 31 Cal. 951; *Ramchandra v. G. I. P. Ry.* (1915) 39 Bom. 485. *Sohantlal v. E. I. Ry.* 44 All. 218.

(11) A condition in the bill of lading that the Company shall not be liable for loss caused by the negligence of the master or mariners in navigating the ship is void as being unreasonable. (*Riggall v. Great Central Ry. Co.* (1909) 14 Com. Cas. 259 followed). *Jenkins v. Great Central Ry. Co.* (1912) 1 K. B. 1; 106 L. T. 565; *Western Electric Co. Ltd. v. G. E. Ry. Co.* (1914) 3 K. B. 554 C. A.

Onus:—The burden of showing that a condition is just and reasonable lies on a railway company. *Peck v. North Staffordshire Ry. Co.* 10 H. L. Cas. 473.

Void limitations of liability:—A person who undertakes the public employment of a common carrier of merchandise or of passengers and luggage has no more right, to engraft upon his contract or employment the terms that "all merchandise received by him to be carried is carried at the risk of the owners" or that "all luggage delivered to him by his passengers is carried at the risk of passengers" and that "he will not be responsible if it is lost or damaged by the way than a common inn-keeper has to refuse to receive goods except on the term that he shall not be responsible for the safe keeping of their goods and luggage deposited in his inn". The consignor of merchandise or the passenger has a right to reject these terms, and to insist that such merchandise, as is ordinarily carried by the carrier or the customary allowance of luggage for a passenger, shall be taken at the common carrier's risk provided the consignor makes the declaration of value, and is ready to pay the premium of insurance, in those cases where the declaration and payment are required by law. Where the carriage of particular articles is attended with any peculiar or extra-ordinary risk, the common carrier is entitled, to refuse to receive and carry such articles unless the nature and value of the articles are declared and an increased charge paid for insurance; but he may at the same time, receive and carry them under a special contract, provided that they shall be carried at the risk of the owner at a lower rate of charge, (vide Addison on contract p. 957).

There is nothing in the Act which operate to prevent a railway company making conditions with a passenger travelling with a free pass which exempt the

company from liability for the loss of such passengers' luggage. *The Stella* 16 T. L. R. 306; *Canadian Pacific Ry. Co. v. Parent* (Supra).

When railway companies are common carriers:—Carrier in its general sense means a person or Company who undertakes to transport the goods of another person from one place to another for hire. *Mylappa v. B. I. S. N. Co.* 45 Ind. Cas. 485 at p. 487. Railway companies are common carriers as regards goods which they profess to carry, or actually carry for persons generally, including live animals, and also passengers' personal luggage, *G. W. Ry. Co. v. Bunch* 57 L. J. Q. B. 361; *Pickford v. Grand Junction Ry. Co.* 10 M. & W. 399, *Palmer v. G. Junction Ry. Co.* 4 M. & W. 749, *Dickson v. G. N. Ry. Co.* 18 Q. B. D. 176, *Johnson v. Mid. Ry. Co.* 4 Ex. 67.

When railway companies are not common carriers:—Railway companies are not common carriers as regards passengers and goods which they do not profess to carry or carry only under special circumstances or agreements limiting their liability in respect to them. *Blake v. G. W. Ry. Co.* 31 L. J. Ex. 346; *Readhead v. Midland Ry. Co.* 38 L. J. Q. B. 169; *Wright v. Midland Ry. Co.* 42 L. J. Ex. 89.

Rights and Liabilities of common carriers:—The rights and liabilities of the common carrier in India are outside the Indian Contract Act and are governed by the principles of the English Common Law, as notified by the Carrier's Act. A common carrier is subjected to two distinct classes of liabilities, (1) Insurable risks from which, the element of default is absent, and (2) carrying risks in which the element is present. English Courts dealing with exemption clauses recognise this distinction and construe them as not extending to carrying risks in the absence of clear words to that effect. *Price & Co. v. Union Lighterage Co.* (1904) 1 K. B. 412; *James Nelson & Sons v. Nelson Line (Liv.) Ltd.* (No. 2) (1907) 1 K. B. 769; *Martin v. G. I. P. Railway Company* L. R. 3 Ex. 9 referred to; *Baxter Leather Co. v. Royal Mail Steam Packet Co.* (1908) 2 K. B. 626 distinguished; a term in the contract exempting the defendant from liability for damage "however caused" relieves him from liability for damage caused by the negligence of his servants. *Joseph Travers & Sons Ltd. v. Cooper* (1915) 1 K. B. 73 C. A.

A fortiori:—In India where there is a statutory prohibition against exempting a carrier from loss arising from negligence and criminal acts, this canon of construction should be adopted, at any rate within the limits implied in the prohibition. *British & Foreign Marine Insurance Co. Ltd. v. India General Navigation & Ry. Co.* (1910) 38 Cal. 28; 15 Cal. W. N. 226; 9 Ind. Cas. 364 see also, (1915) *Akhilkhanda v. I. G. N. & Ry. Co.* 21 Cal. L. J. 565; 29 I. C. 260:—Where it was held that a common carrier in India is liable as an insurer, that is, he is responsible for the safety of the goods entrusted to him in all events except loss or injury arising from Acts of God or King's enemies. But his liability for loss or injury in respect of the goods carried may be varied by contract.

The duties and liabilities of common carriers are governed in India by the principles of the English common law on that subject (except where they have been departed from, in cases of some classes of common carriers, by the Carriers' Act of 1865 or by the Railway Acts of 1878 and 1890) and that notwithstanding some general expressions in the Chapter on Bailment, a common carrier's responsibility is not within the Indian Contract Act of 1872. *Kariadan Kember v. British India Steam Navigation Co.* 38 Mad. 941, (*Irrawady Fottila Co. v. Bhagwandas* 18 Cal. 620 followed).

The common law of England regarding the responsibility of common carriers shall not affect the responsibility of railway administration:—The provisions of Ss. 151 and 152 of the Contract Act embody in effect the common law rule as to the liability of bailees other than common carriers. The liability of bailees in respect of goods entrusted to them is for negligence only, in the absence of a special contract. Common carriers, on the other hand, are liable as insurers, of goods i. e. they are responsible for every injury to the goods occasioned by *any means whatever*, except only the Act of God and the King's enemies. Therefore, on proof of delivery of goods and injury thereto, unless caused by the Act of God or the King's enemies is sufficient to entitle the plaintiff to compensation without proof of negligence on the part of the defendant. *Kuverji v. G. I. P. Ry.* 3 Bom. 109; *Nugent v. Smith* 1 C. P. D. 437. There is no foundation for the contention that a railway administration, when it accepts goods for transmission is in the position of an insurer or a common carrier. *Surendralal v. Secy. of State* 21 Cal. W. N. 1125; 43 Ind. Cas. 263.

Carriers Act III of 1865:—S. 7 (so far as it relates to railways) and S. 10 are repealed by S. 2 of the Railways Act.

Suit by bailors or bailees against wrong-doers:—Ss. 180 and 181 of the Indian Contract Act deal with the question of suits by bailors or bailees against wrong doers in connection with goods. These Sections run as bereunder:—

180.—If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

181.—Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

The bailee could and can always sue a wrong-doer, and his right does not, as once supposed, depend on his being answerable to the bailor. *The Winkfield* (1902) C. A. p. 42.

Responsibility of railway companies for goods left on its premises without obtaining a receipt thereof:—Where a consignor had delivered go

to a railway company for transmission and had the forwarding note in respect thereof duly registered and marked by the railway company, but had obtained no receipt from it and the goods were lost, Held, that the rules framed by the railway company under Ss. 47 & 54, whereby goods were to stand at owner's risk, and the railway company were not to be liable therefore, until a receipt had been granted by them, were inconsistent with the Act and unreasonable, and that the railway company were liable. *Jalam Singh v. Secretary of State for India* 31 Cal. 951; *Ramchandra v. G. I. P. Ry.* (1915) 39 Bom. 485 *Sohanlal v. E. I. Ry.* (1922) 44 All. 218 *Contra-Banna mal v. Secy. of State* 23 All. 367 and *N. W. Ry. Co. v. Shivnarayan* 1 Sind. L. R. 78.

Receipt (forwarding) note not signed by the consignor-consignor's liability:—The fact that the consignor had not signed the receipt-note for the goods was held immaterial because he had actually delivered the goods under the terms of such a note and could not claim exemption from any of its terms. *Bean v. Sandys* 99 P. R. (1885).

Consignment note, to be signed by:—Under the words "*Sender or deliverer of goods*" in the consignment note, the consignor may be bound not by the signature of himself or his agent, but also by the signature of the person who delivers the goods to the company, whether in fact that person had authority to sign or not.

The following documents are not chargeable with stamp fee:—

- (1). Complaint of a servant of a Railway Company—(Court Fee Act VII of 1870 S. 19 cl. XVIII).
- (2). Receipt given by, or on behalf of, a depositor in a State Railway Provident Institution or in the E. I. Railway Savings Bank for a sum of money withdrawn, from the Bank or Institution. Stamp Act Appendix B.
- (3). Agreement made with a railway company and with Inland Steamer Coy. for the conveyance of goods.
- (4). Agreement or indemnity bond given to a railway authority by a passenger permitted to travel without payment of fare, indemnifying such authority from any claim for damages, in case of accident or injury.
- (5). Agreement or indemnity bond given to a railway authority by a consignee (when the railway receipt is not produced) in receipt of the delivery of the articles carried at half parcel rates or at goods rates namely fresh-fish, fruits, vegetables, bazar-baskets, bread, meat, ice and other perishable articles.
- (6). Agreement made with a railway company or administration, which purports to limit the responsibility of the company or administration as declared by the Indian Railways Act 1890 (IX of 1890) Section 72 sub s. (1) and is in a form approved by the Governor-General in Council under sub s. (2) of that section.

- (7). Receipt given by a railway company or administration for the fare for the conveyance of passengers or goods, or both, or animals, or given to such company or administration for the refund of an overcharge made in respect of such fare.

Offer without prejudice:—The law favours overtures, the object of which is to put an end to litigation. Confidential overtures of pacification, and any other offers or propositions between litigating parties, expressly or impliedly made without prejudice, are excluded on grounds of public policy. (*Cary v. Bretton* (1830), 4 C. & P. 462; *Healy v. Thatchar*, 8 C. & P. 388; *Peacock v. Forrester* 3 Scott. N. R., 734 *Jardine v. Sheridan*, 2 C. & Kir. 24; *Whiffen v. Hardwright* 11 Beav. 111.) If this were not so, it would often be difficult to take any steps, towards an amicable compromise or adjustment. *Lord Mansfield* has observed that all men must be permitted to buy their peace, without prejudice to them, should the offer not succeed; such offers being made to stop litigation, without regard to the question whether anything is due or not. If therefore, a defendant on being sued for £ 100 should offer the plaintiff £ 20, at the same time stating that he made such offer "without prejudice", evidence of the offer would not be admissible in evidence, for it is irrelevant to the issue; it neither admits nor ascertains any debt, and is no more than saying that he would give £ 20 to be rid of the action. An offer made "without prejudice", cannot be looked at even upon a question of costs; *Walker v. Wiltshire* (1899), 23 Q. B. D. 335 (C. A.) Even the giving of a small sum in order to obtain the release of right, cannot be considered as an acknowledgment that a right exists; it amounts only to this; "I give you so much for not seeking to disturb me; *Underwood v. La. Courtown*, 2 Sch. & Lef. 67 Ir.

"The most ordinary exemplification of this rule of law is the case of *Paddock v. Forester*, 3, Scotts. N. R. 734: 3 M. & Gr., 903 (1842), where a letter by an attorney to the opposite party, containing an offer to "purchase peace" and headed "without prejudice", was not allowed to be given in evidence; nor the reply, though not guarded in a similar manner."

Referring to the subject says Mr. Cunningham: When there is a dispute between two persons and one of them writes to the other making an offer of certain terms, he may stipulate that in case his offer is not accepted, his letter is not to be used against him as an admission of liability. Such a letter is generally described as written "without prejudice" and it is not admissible in evidence. Moreover any letter written in answer to it or any other letter relating to the offer cannot be admitted without the consent of both parties to the correspondence.

The words "without prejudice" simply mean this: "I make you an offer, if you do not accept it, this letter is not to be used against me;" or they tantamount to saying, "I make you an offer which you may accept or not, as you like; but, if you do not accept it, my having made it, is to have no effect at all;" In re River Steamer & Co., L. R., 6 Ch., 322 p. 327.

An offer of compromise, the essence of which is that the party making it is willing to submit to a sacrifice, or to make a concession, will be rejected, though nothing at the time was expressly said respecting its confidential character, if it clearly appears to have been made under the faith of an impending treaty, into which the party has been led by the confidence of an agreement being effected; *Waldrige v. Kennison*, 1 Esp. 144.

Documents "Without Prejudice":—A letter written with regard to an action and marked "without prejudice", was only privileged for the purposes of the action. *Stretton v. Stubbs*, 10 C. W. N. 42n.

In a suit for recovery of money, the defendant pleaded limitation. In reply, the plaintiff relied on an acknowledgment of debt given by the defendant on a post card, in which he promised to pay Rs. 30 to plaintiff and acknowledged his liability to pay any sum that may be due. The post card bore on it the words "without prejudice"—Held, that the post card was inadmissible in evidence. Per Candy, J. I doubt whether the post card was inadmissible. To exclude it from evidence, it would be necessary to hold that the words "without prejudice" amounted to an express condition that the card should not be used in evidence against the writer. In England apparently the card would have been admissible. *Madhavrao v. Gulabbhai*, 23 Bom. 197 (In re Daintrey, L. R. (1893), 2 Q. B. 116 referred to).

Where a letter was sent to the adverse party by a solicitor marked "without prejudice", it cannot be received as an admission nor can the reply be admitted, even though not guarded in similar manner. *Paddock v. Forrester*, (1842) 3 Scott. N. R. 734; *Hoghton v. Hoghton*, 21 L. J. Ch. 482. A letter marked "without prejudice" protects subsequent and previous letters of the same correspondence. *Paddock v. Forrester*, 3 M. & G. 903; *Peacock v. Harper*, 26 W. R. 109.

The evidence as to negotiations of compromise and the statements made during such negotiations are generally without prejudice. It is ordinarily against public policy to admit such evidence and statements.

The offer of compensation by railway officials was an unconditional offer and the railway company must be taken to have acknowledged liability. *Shri Gangaji Cotton Mills Co. v. E. I. Railway Co.* (1922) 20 A. L. J. 761.

Limitation.

(A) **Suit for compensation for losing or injuring goods:**—One year from the time when the loss or injury occurs—Art 30 Limitation Act IX of 1908.

Art. 30 of Sch. I of the Limitation Act IX of 1908 applies to cases where the consignor sues a railway company for compensation for loss of goods alleging the same to have been due to the wilful negligence of or theft by its servants. *E. I. Railway Co. v. Ram Autar* (1916) 20 Cal. W. N. 696. *Louis Dreyfus & Co. v. Secy of State* 11, S. L. R. 103; 45 Ind. Cas. 173.

(B) **Suit for compensation for non-delivery of, or delay in delivering goods:**—One year from the time when the goods ought to be delivered—Art 31. Limitation Act IX of 1908; *Hajee Ajam v. The Bombay & Persia S. N. Co.* 4 Bom. L. R. 447=26 Bom. 562; *Motiram v. E. I. Ry.* 108 P. R. 1906; *G. I. P. Ry. v. Ganpatrai* 33 All. 544. This article is not restricted in its application to common carriers. It applies to carriers who come within its definition. *Mylappa v. B. I. S. N. Co.* 45 Ind. Cas. 485; *B. I. S. N. Co. v. Hussein Cassam* 42 Ind. Cas. 536.

Limitation of suit for compensation for non-delivery:—Formerly it has been held by various High Courts (3 Mad. 107, 5 Mad. 388, 7 Bom. 478, and 12 Cal. 477) that a suit based on a breach of contract, for value of goods short delivered or not delivered, (i. e. for non-delivery) was not within Art. 30 and the residuary article for suits on contracts viz., Art. 115 was applied—the ground of the decisions being that Art. 30 was limited in its scope to suits based on torts and that even conceding that suits based on contracts came within the purview of Art. 30, a mere non-delivery was no proof of loss and that the onus was on defendant, who sought to bring the suit within Art. 30, to prove the loss. Both reasonings and the decisions themselves cannot be supported now and such a suit i. e. for non-delivery would clearly be subject to the one year's limitation prescribed by the amended Art. 31. *G. I. P. Ry. v. Ganpatrai* 33 All. 544; *I. G. N. & Ry. Co. v. Nandu Lal* 13 Cal. W. N. 851; *Haji Hussen v. B. S. P. N. Co.* 26 Bom. 562; *Ali Mahomed v. G. I. P. Ry. Co.* 11 Nag. L. R. 174 (1915); *Motiram v. E. I. Ry. Co.* 101 P. R. 1906.

Limitation of suits in cases of misdelivery:—When there has been a misdelivery i. e. delivery of goods to some one not entitled, the case seems to be covered by Art 30 (as for losing the goods.) 19 Bom. 159, as loss includes loss by misdelivery. *Hill sawyer & Co. v. Secy. of State.* (1921) 2 Lahore 133; *M. & S. M. Ry. Co. v. Haridas* 41 Mad. 871. The Punjab case (1913) P. L. R. 170, which had laid down the law to the contrary must be taken to be no longer binding.

Limitation of suits when goods are found to have gone astray:—Art. 115 would apply to cases in which goods not delivered are not alleged to have been lost but are found to have gone astray after they were delivered to the railway for carriage. *Radhia Sham Basak v. Secretary of State* (1916) 20 Cal. W. N. 790. 44 Cal. 16.

Limitation for recovery of surplus of sale proceeds:—A suit by a consignor of goods for the recovery of surplus of sale-proceeds under Ss. 55 & 56 of the Railway Act is governed by Art. 62 & not by 31 of the Limitation Act; *Tarachand v. M. & S. M. Ry.* (1921) 44 Mad. 823; 40 M. L. J. 18.

Limitation of suit for compensation for goods lying in Lost Property office:—A letter offering to settle a claim for compensation for goods lying in lost property office written by the Ry. Co. long after the claim had become

time-barred would not save the operation of limitation and it could not be construed as a promise to pay anything. At best it could be treated as an offer made *without prejudice* to compromise the plff's claim. *Mutsadi Lal v. B. B. & C. I. Ry.* (1920) 42 All. 390; 18 A. L. J. 377.

Limitation for recovery of overcharges:—Art 62 of the Limitation Act applies because the payments made by the plff were not voluntary. *Edward J. v. G. W. Ry. Co.* 11 C. B. 588.

73. (1) The responsibility of a railway administration under the last foregoing section for the loss, destruction or deterioration of animals delivered to the administration to be carried on a railway shall not in any case exceed, in the case of elephants or horses, five hundred rupees a head or, in the case of [mules], camels or horned cattle, fifty rupees a head or, in the case of [donkeys], sheep, goats, dogs or other animals, ten rupees a head, unless the person sending or delivering them to the administration caused them to be declared or declared them, at the time of their delivery for carriage by railway, to be respectively of higher value than five hundred, fifty or ten rupees a head, as the case may be.

Further provision with respect to the liability of a railway administration as a carrier of animals.

(2). Where such higher value has been declared the railway administration may charge, in respect of the increased risk, a percentage upon the excess of the value so declared over the respective sums aforesaid.

(3). In every proceeding against a railway administration for the recovery of compensation for the loss, destruction or deterioration of any animal, the burden of proving the value of the animal, and where the animal has been injured, the extent of the injury, shall lie upon the person claiming the compensation.

This section is taken from S. 7 of the Railway & Canal Traffic Act, 1854 (17 & 18 Vic. Ch. 31). By this section 7 of the Act of 1854 the liabilities of the companies are limited in respect of the classes of animals mentioned in case of neglect or default in the "receiving, forwarding or delivering" of such animals. And hence, if any animal is injured by negligence when brought on to the company's premises before any declaration or contract is made, the company are only liable upto the limit, because the negligence is the negligence in receiving.

Loss, destruction &c. See notes to Sec. 72 pp. 217 & 268.

Declaration of value:—To entitle the company to demand the percentage under S. 7 (Railway and Canal Traffic Act, 1854), the sender must make a

declaration with the intention of paying the percentage. *Robinson v. L. & S. W. Ry. Co.* 34 L. J. C. P. 234; *G. I. P. Ry. Co. v. Raesett* 19 Bom. 165.

The sender cannot recover any greater damages for the loss of, or for any injury done to, a horse or other animal while in the hands of the railway company than the amount of the declared value. *McCance v. L. & N. W. Ry. Co.* 3 H. & C. 343; 11 L. T. 426; *Nevin v. Great Southern and Western Ry. Co.* 30 L. R. Ir. 125.

Where a horse was injured at a railway station by the negligence of the company before its value was declared or a ticket taken or rate demanded for it, it was held that as the injury was in the *receiving* the owner could not recover more than the amount limited by the statute, even though the usual practice is to put horses into the horse boxes before their value is declared or the rate paid. *Hodgman v. W. Midland Ry. Co.* 35 L. J. Q. B. (Ex. Ch.) 85; 6 B & S. 560. In this case the facts were as hereunder:—The plaintiff sent a horse, in charge of his groom to the station of the deft. company, to be forwarded to London. The groom, on bringing the horse on to the company's premises, was told by the porter to lead the horse through the yard by a certain way. A pile of sharp-iron girders were lying so that the horse had to be led close to them. Another horse took fright and backed on to the first horse, causing him to back on to the girders. In consequence, he was so seriously injured that it was necessary to kill him. Miller J. said:—"It appears to me the more reasonable construction is that so soon as the horse enters the company's premises for the purpose of being received, forwarded and delivered, the act of delivery begins, and that if the person sending a horse to be carried on the railway desires to be in a position to recover against the company greater damages than the amount limited by the statute, he *must have made* the requisite declaration of value before the horse was taken to the premises of the company'.

Result of omission of declaration of value:—The omission to declare the value of the goods has this effect that under S. 73 of the Act the railway could not be rendered liable for more than Rs 10. per each head of the animals carried. The omission to declare the value would not disentitle the plff from obtaining substantial compensation not exceeding Rs. 10 per head. *Arratoon v. E. I. Ry.* 38 Ind. Cas. 143.

Meaning of value:—"Value" means intrinsic value at the time the parcel is delivered. *Stoessiger v. S. E. Ry. Co.* 23 L. J. Q. B. 293; 3 E. & B. 549.

Carrier not liable for "inherent vice" of animals:—(1) The carrier of an animal, though generally subject to the liabilities of a common carrier, is excused for injury caused by the inherent vice of the animal, without negligence, or want of fitness in the means of conveyance furnished on the part of the carrier. It is the duty of a railway company to provide vehicles for the carriage of cattle sufficient to secure the cattle from injury from the ordinary incidents of a railway journey including fright occasioned by their novel position and passing objects. It should also see that all horse boxes and cattle trucks are in a sound condition and sufficiently

strong enough to withstand all ordinary strain and all such violence as can be reasonably expected from the animals carried. *Blower v. G. W. Ry. Co.* L. R. 7 C. P. 655; 41 L. J. C. P. 268. See also at pp. 233-234.

(2). A horse was placed by the railway company's servants in a horse-box. At the end of the journey the horse was found to be injured. The horse was proved to be free from vice and during the journey nothing unusual occurred to the train. Bramwell B. said.—“There is no doubt in this case that the horse was the immediate cause of its own injuries, i.e., no person got into the box and injured it. It slipped or fell or kicked or plunged, or in some way hurt itself. If it did so from no other cause, than its inherent propensities—(its ‘proper vice’) that is to say, from fright or temper or struggling to keep its legs, the defendants are not liable. But if it so hurt itself from the defendants’ negligence or from any misfortune happening to the train, though not through any negligence of the defendants as for instance, from the horse-box leaving the line owing to some obstruction maliciously put on it, then the defendants would, as insurers, be liable”. *Kendall v. L. & S. W. Ry. Co.* L. R. 7 Ex. 373, 41 L. J. Ex. 18; *Gill v. Manchester Ry. Co.* L. R. 8 Q. B. 186.

So also, the carrier cannot be charged with negligence if an animal escapes by reason of the insufficiency of a chain and collar sent with the animal by the owner which appeared sufficient at the time. *Richardson v. N. E. Ry. Co.* L. R. 7 C. P. 75; but the case would be different if the fastening could be seen to be insufficient. *Stuart v. Brady* 2 Stark 323.

Sufficiency of vehicles:—“The sufficiency or insufficiency of the vehicles by which the company are to carry on their business is a matter, generally speaking, which they and they alone have or ought to have, the means of fully ascertaining. And it would not be unreasonable, but mischievous, if they were to be allowed to absolve themselves from the consequences of neglecting to perform properly that which seems naturally to belong to them as a duty”. *McManus v. Lancashire & Yorkshire Ry. Co.* 28 L. J. Ex. 353.

A railway company are bound to provide trucks that are reasonably sufficient for the conveyance of animals under the ordinary incidents of a railway journey. *Amies v. Stevens* 1 Str. 127 *Blower v. G. W. Ry. Co.* L. R. 7 C. P. 655; see *Comb v. L. & S. W. Ry. Co.* 31 L. T. 613. In *Amies v. Stevens* the Judge said that—“No carrier is obliged to have a new carriage for every journey. It is sufficient if he provides one which without any extra-ordinary accident will probably perform the journey”.

Railway company to provide fit and proper places for receiving and delivering animals:—It is the duty of a railway company to provide fit and proper places for receiving and delivering animals and they cannot relieve themselves from this duty by inserting conditions in a special contract for their carriage. *Rooth v. N. E. Ry. Co.* L. R. 2 Ex. 173; 36; L. J. Ex. 83; although there is no specific obligation on the company carrying animal to provide fences or guards at the station

where they are unloaded so as to ensure their not straying on the line. *Roberts v. G. W. Ry. Co.* 27 L. J. C. P. 266. The responsibility of a railway company, does not cease until the owner or consignee by watchfulness, had, or might have had an opportunity to remove them. In *Shepherd v. B. & E. Ry. Co.* L. R. 3. Ex. 189; 37 L. J. Ex. 113, the consignee had taken possession of the animals but had not removed them from the premises of the company when they were injured and the company were not held liable for the injury. There is also a corresponding duty on the part of the sender or the consignee of the animals to provide for the reception of the cattle on their arrival, and that the company will not be held liable for damage to cattle occasioned by there being no one to receive them on their arrival. *Wise v. G. W. Ry. Co.* 25 L. J. Ex. 238, and a railway company may at the end of the journey put a horse into a livery stable if no person come to fetch him from the station and the company may recover the livery charges from the consignee *G. N. Ry. Co. v. Swaffield* L. R. 9 Ex. 132; 43 L. J. Ex. 89.

Owner undertaking all risk:—Where the owner undertakes all risks of conveyance whatever, the company will not be liable for damages to cattle caused owing to the trucks being unfit and unsafe. *Chippendale v. L. & Y. Ry. Co.* 21 L. J. Q. B. 22; *Carr v. L. & Y. Ry. Co.* 7 Ex. 707.

Station Master is agent for delivery:—The station Master is an agent for the railway company to deliver goods, and if he assents to some other mode of delivery than the usual, one, he will bind the company thereby. *Wright v. L. & N. W. Ry. Co.* 44 L. J. Q. B. 120; see also at p. 264.

If goods are brought by mistake and without right, and delivered at a railway station, the station master has no right to detain them, after demand by the owner and the tender of any reasonable expenses due upon them. *Rooke v. Mid Ry. Co.* 16 Jur. 1069.

Detention of cattle at destination:—Where the plaintiff delivered cattle carriage paid to the deft company for carriage and signed a special contract exonerating the company from "any loss or detention of or injury to the said animals or any of them in the receiving, forwarding, or delivery thereof except upon proof that the loss, detention, or injury arose from the wilful misconduct of the company or its servants;" and the cattle were detained at the destination by the company claiming a lien for the cost of carriage, the clerk having omitted to enter the prepayment; the plff. was held entitled to recover. That although the wrongful refusal to deliver did not amount to wilful misconduct, it did not also come within the meaning of "loss or detention in the receiving, forwarding or delivering." *Gordon v. G. W. Ry. Co.* (1881) 8 Q. B. D. 44; 51 L. J. Q. B. 58; *Jarman v. G. W. Ry. Co.* 22 W. R. 73; *G. W. Ry. Co. v. Mc. Carthy* 12 App. Cas. 218.

Charges for food and water supplied:—Even where there is no request by the consignor, such request is implied, if it becomes reasonably necessary that animals should be , and it is the duty of the carrier to supply

such necessary food, the charges for which may be recovered from the consignor or consignee. *Great Southern & Western Ry. Co. v. Hourigan* (1910) 44 L. T. 86. *G. N. Ry. Co. v. Swaffield* (Supra).

Overcrowding of cattle—Infliction of cruelty:—(1) Sometimes from motives of economy the owner of cattle requests the company to carry an unusual number of cattle in a truck. In such cases the company are justified in insisting upon a condition that they shall not be responsible for loss due to overcrowding, and in such circumstances such a condition is reasonable. *Sheridan v. Midland G. W. Ry. Co.* 24 L. R. 1r. 146.

(2) The G. I. P. Ry. Co. carried 27 head of cattle from T to B. These cattle were put in one truck by their owner under the supervision of the company's goods clerk at T, and were so allowed to be put by the company's servants at T in spite of a circular issued to them by Traffic Manager to prevent overcrowding of cattle. When the cattle were detrained at the goods yard of the company at Wari Bunder, Bombay, they were found suffering from the effects of overcrowding. In a complaint against the company for cruelty to animals under S. 3 (b) of the Act for the prevention of cruelty to animals, (XI of 1890) it was held that the company were not liable under the above circumstances. Act XI of 1890 is aimed at the individual who actually practises the cruelty and it was not intended by the Legislature to make a master personally liable for the act of his servant done in the course of the servant's employment, and certainly not when the act is done contrary to the orders of the master. *Carusjee v. G. I. P. Ry. Co.* 26 Bom. 609.

Deterioration is an injury:—Deterioration of cattle from want of food and water is an injury within the meaning of the Act. *Alklay v. G. W. Ry. Co.* 30 L. J. Q. B. 5; 5 B. & S. 903. Where the deterioration is caused by the default of the carrier he is liable. *Wilson v. Lanc. Ry. Co.* 30 L. J. C. P. 232; *Gill v. M. S. & L. Ry. Co.* L. R. 8 Q. B. 186; 42 L. J. Q. B. 89; *Blower v. G. W. Ry. Co.* (Supra). If the goods or animals required to be aired or ventilated during the journey, he must take the usual and proper methods for that purpose; but if he neglects to perform this duty, he renders himself liable for the consequences. *Davidson v. Gwynne* 12 East 381; *Hawkes v. Smith Car. & M.* 72. *Arratoon v. E. I. Ry.* 38 Ind. Cas. 143. See also *Abbott on Shipp.* 14th Ed. p. 547.

74. A railway administration shall not be responsible for the loss, destruction or deterioration of any luggage belonging to or in charge of a passenger unless a railway servant has booked and given a receipt therefor.

Further provision with respect to the liability of a railway administration as a carrier of luggage.

When railway company is a common carrier:—Railway companies are common carriers in respect of the personal luggage of a passenger accepted and received by them for the purposes of transit. Where luggage is placed in a

carriage under the personal charge of the passenger, they are still responsible for negligence. *G. W. Ry. Co. v. Bunch* 13 App. Cas. 31; *Blake v. G. W. Ry. Co.* 31 L. J. Ex. 316. See also at p. 282.

Loss, destruction &c.—See notes to S. 72. at pp. 217–268.

Luggage.—Park, B. in *Shepherd v. G. N. Ry. Co.* 21 L. J. Ex. 286. 8 Ex. 30 said that under the term “luggage” may be comprised the passenger’s clothing and every thing required for his personal convenience, and perhaps even a small present, had he had such with him, or a book on the journey might also be included in that term, but the company are certainly not bound to carry merchandise and materials intended for trade, and to be sold at a profit.” Type-writer carried for business purposes is not a passenger’s luggage. *Hastie v. G. E. Ry. Co.* (1911) 16 L. J. 507.

Personal luggage.

(1) **What is personal luggage.**—Personal luggage means such articles of necessity or personal convenience as are usually carried by passengers for their use and not merchandise or other valuables, although carried in the trunks of passengers, which are not designed for any such use, but for other purpose, such as sale or the like—Story on Bailments p. 474.

It includes whatever the passenger takes with him for his personal use or convenience, according to the habits or wants of the particular class to which he or she belongs and thus may include the gun-case or fishing apparatus of the sportsman, the easel of the artist on a sketching tour or the books of a student, revolver, binocular glasses, ear defenders and flash lamp of an army officer. [*Jenkyns v. Southampton &c. Steam Packet Co.* (1919) 2 K. B. 135.] and other articles of analogous character, the use of which is personal to the traveller, and the taking of which has arisen from the fact of his journeying. *Macrow v. G. W. Ry. Co.* L. R. 6 Q. B. 618; 40 L. J. Q. B. 300; *G. N. Ry. Co. v. Shepherd* 21 L. J. Ex. 286; but cello carried by a player with him while travelling cannot be called his ordinary personal luggage as it is carried by him for the purpose of his business.

In the same way a commercial traveller’s samples could not be considered as personal luggage. *W. Evans v. G. W. Ry. Co.* (King’s Bench) (1922) 26 Cal. W. N. xxxv. (1921) 38. T. L. R. 166.

(2) **What articles are excluded from personal luggage.**—Byles J. said “I should doubt if a man’s own title-deeds and securities can be called ordinary luggage but when they belong to another person the case is still clearer.” *Phelps v. L. & N. W. Ry. Co.* 34 L. J. C. P. 259. Articles carried for the purposes of trade or business, such as a type-writer carried for business purposes. *Hastie v. G. E. Ry. Co.* (1911) 16 L. J. 507. *Hudson v. Midland Ry. Co.* L. R. 4 Q. B. 366; 38 L. J. Q. B. 213; articles of furniture or household goods. *Macrow v. G. W. Ry*

Co. (Supra); In this case it was held that 6 pairs of sheets, 6 pairs of blankets and 6 quilts which were intended for household use were not personal luggage; but a pair of sheet or the like taken by a passenger for his use on a journey is so; pencil sketches of an artist. *Mytton v. Midland Ry. Co.* 28 L. J. Ex. 385; articles of such a size and shape that they cannot be reasonably carried as a luggage e. g. a child's toy called a spring horse 78 lbs. in weight and 41 inches in length standing on the surface. *Hudson v. Midland Ry. Co.* L. R. 4 Q. B. 366; 38 L. J. Q. B. 213; Bicycle is not the kind of article or of the character that it can be included under the expression "ordinary luggage," *Britten v. G. N. Ry. Co.* (1899) 1 Q. B. 243; 68 L. J. Q. B. 75 nor the sewing machine can be so included under it, *G. N. Ry. Co. v. Shepherd* 8 Ex. 30; *Brutty v. Grand Trunk Ry.* 32 Upper Canada Reports; nor deeds and money of a client carried by an attorney. *Phelps v. L. & N. W. Ry. Co.* 35 L. J. C. P. 259; an invalid chair *Cusack v. L. & N. W. Ry. Co.* 7 T. L. R. 452, and therefore a passenger by train, without luggage, is not entitled to take with him, free of charge, a bicycle of less weight than the weight of luggage allowed to be carried free of charge by the class in which he is travelling. *Britten v. G. N. Ry. Co.* (supra).

Making over some of the luggage to a friend to evade payment whether amounts to cheating:—If a passenger attempts to evade payment of charge for over-weight by making over some of the luggage to a friend is not guilty of an offence of cheating. 25 P. R. 1903 Cr.

Articles of merchandise sent as passenger's luggage—Liability of a railway company:—When a package containing merchandise which was delivered by a passenger to the servants of a railway company to be carried as passenger's "luggage," is lost, the company is bound to make good the loss. The liability arises under S. 72, which specifically excludes, the operation of the common law and the Carriers Act of 1865 to such cases of loss of goods. *Velayat Hoossein v. Bengal & North Western Ry. Co.* 13 Cal. W. N. 847 = 36 Cal. 819.

In *Cahill v. L. & N. W. Ry. Co.* 31 L. J. C. P. 271; 13 C. B. (N. S.) 818; Cockburn C. J. said that "If a railway company who, by their Act of Parliament, are bound, or by their regulations profess, to carry personal luggage, choose to take as ordinary luggage that which they know to be merchandise, . . . it is not competent to them, in the event of a loss, to claim exemption from liability on the ground that the article consists of merchandise and not of ordinary luggage." In *Shepherd v. G. N. Ry. Co.* 21 L. J. Ex. 286 it was held that if the merchandise be so packed as to be clearly seen as merchandise, the company will be responsible for the loss in the absence of any special contract to the contrary. While delivering the judgment of this case Parke, B. remarked that "Had the railway company, with full notice of what the passenger was carrying, chosen to treat it as luggage, they would have been responsible for the loss; but their duty as common carriers was only to carry luggage, and not merchandise or articles wholly disconnected with personal luggage. If they had had notice, they might have refused

to carry it without an additional payment, but they had no opportunity of acquiring this knowledge in this case. Whether this was done with any fraudulent intention it is not material to inquire, for, if without any fraud the passenger has so conducted himself that the company were not apprised of the nature of what he was carrying, it is the same in effect as if a fraud had been intended." See also *Macrow v. G. W. Ry. Co.* L. R. 6 Q. B. 612, 619, *Wilkinson v. L. & Y. Ry. Co.* (1907) 2 K. B. 222.

And that it makes no difference that the passenger was ignorant of the rule that nothing but the personal luggage upto a certain weight can be carried free of charge. And if he, with intent to avoid paying the company its just freight, takes merchandise, into a passenger's carriage, he cannot hold the company liable as a common carrier, although the merchandise, at the request of the company's servant, is placed in the luggage van and is lost. *Belfast & B. Ry. Co. v. Keys* 9 H. L. Cas. 536, 4. L. T. 841.

Duty of railway company to carry passenger's luggage:—The duty to carry passengers' luggage of a certain weight free of charge and as insurers is recognized by the definition of "Traffic in the Railway and Canal Traffic Act, 1854 (17 & 18 Vic. C. 31 S. 1 & 2); Railway Companies cannot refuse to take charge of personal luggage in order to avoid their liability as insurers. *Munster v. S. E. Ry. Co.* 4 C. B. (N. S.) 676; 27 L. J. C. P. 308; They are however, not precluded from making special stipulations with regard to the carriage of luggage by cheap excursion trains. *Rumsey v. N. E. Ry. Co.* 14 C. B. (N. S.) 641; 32 L. J. C. P. 244.

Person sending his luggage by a passenger:—The accused was convicted for sending his luggage by a passenger in a train in which he did not travel under a bye-law of a company for evading payment of fare due to them. The conviction was set aside in appeal holding that every passenger was entitled to convey a certain quantity of luggage and that there is no rule providing that every passenger should carry his own luggage and that the servants of the Ry. Co. are not empowered to enquire into the ownership of luggage which passengers take with them when travelling. *Crown v. Parasram Punj* c. c. case No. 318 of 1903.

Liability of railway company for passenger's luggage:—(1) "When the passenger had paid his fare, he is entitled to have his luggage conveyed as well as himself, and although you may not be able to say how much of that fare is for the conveyance of the passenger and how much for the luggage, it does seem absurd to say, that the company are gratuitous bailees; and since they are not so, they are necessarily liable for the loss of luggage by the carelessness of their servants. It is not necessary to determine whether they are liable as common carriers, though upon the authorities I think they are, but whether that is so or not they are liable for loss by negligence. Per Mellish L. J. in *Cohen v. S. E. Ry. Co.* 46 L. J. Ex. 417; 2 Ex. D: 253; *Macrow v. G. W. Ry. Co.* L. R. 6 Q. B. 612; 40 L. J. Q. B. 300; *Talley v. G. W. Ry. Co.* 40 L. J. C. P. 9.

(2) A father paying full fare is held to be entitled to recover for loss of articles of his infant child, packed and carried with his luggage, although the child paid no fare. *Whitney v. Peru Ry. Co.* 1 L. R. A. (N. S.) 352.

(3) A servant of the plff. took a ticket for a station on defts' railway and a portmanteau of his was accepted by the defendants as his personal luggage. The portmanteau contained the property of the plaintiff. Through an act of misfeasance of a porter, the property was lost. In an action, it was held that though the fare was paid by the master, the defendants were liable for the tortious act of their servants. *Meuz v. G. E. Ry. Co.* (1895) 2 Q. B. 387; 64 L. J. Q. B. 657; *Marshall v. Y. N. & Berwick Ry. Co.* 11 C. B. 655; 21 L. J. C. P. 34; But a third party whose property is lost while being carried as a passenger's luggage cannot maintain an action against the company. *Becher v. G. E. Ry. Co.* 1 L. J. 5 Q. B. 241; 22 L. T. 299.

(4) Where plaintiff, carried by the defendant company under a contract with the Indian Government, may sue for an injury done to his property through the defendant company's negligence whilst the goods were in their custody though he could not sue the defendant company for the non-performance of their duties as carriers. *Martin v. G. I. P. Ry. Co.* L. R. 3 Ex. 9; 37 L. J. Ex. 27.

(5) When a passenger takes his luggage in the compartment with him, he relieves the company of a large part of their responsibility, and if while under his own charge the luggage is lost or damaged without any negligence on the part of the railway company, the company, are not liable. *Talley v. G. W. Ry. Co.* (Supra).

(6) So where luggage is placed in a cloak room at a railway station, it cannot be said to have been received by the company as carriers, but it is a deposit without hire as the case may be. *Van Toll v. S. E. Ry. Co.* 8 Jur. N. S. 1213.

Luggage on its way to or from the carriage:—Where luggage is entrusted to a porter to be placed in the railway carriage with the passenger, and is lost before it is placed in the carriage, the company is liable, if the circumstances are such as to show that the luggage was entrusted to the porter for the purpose of the transit, and not to be taken charge of while the journey was suspended. *Bunch v. G. W. Ry. Co.* 17 Q. B. D. 215; *Welch v. L. & N. W. Ry. Co.* 34 W. R. 166. The same rule applies at the other end of the journey, if luggage carried with the passenger is given to a porter to be taken to a cab and lost on the way. *Richards v. L. B. & S. Ry. Co.* 7 C. B. 839; *Butcher v. L. & S. W. Ry. Co.* 16 C. B. 13; *Leach v. S. E. Ry. Co.* 34 L. T. 134;

When liability commences:—The liability of the company for passenger's luggage commences from the time when it is delivered to the servants of the company for the particular journey, though the train may not start for a considerable time. *Lovell v. L. C. & D. Ry. Co.* 45 L. J. Q. B. 476.

Luggage handed to a porter, while passenger having to wait three-quarters of an hour for a connecting train, went to the refreshment room on the station pre-

mises on his way from the one platform to the other; held that the company were liable for the loss of his luggage. *Fitton v. L. & Y. Ry. Co.* (1914) 3 L. J. (C.C.) 68.

Luggage must be ready for delivery:—(1) At the end of the journey it is the duty of the company to deliver the luggage carried in the van to the passenger on the platform. They are only bound to deliver it on the platform and must allow the passenger a reasonable time within which to claim it and take it away. The passenger's duty is to be ready to receive it within a reasonable time, and if he is not so ready and does not take it within a reasonable time the company cease to be responsible. *Patscheider v. G. W. Ry. Co.* 3 Ex. D. 153; 38 L. T. 149.

(2). The plaintiff on arrival at destination, through mistake picked up a portmanteau not his own and drove with it to his house. On discovering his mistake he drove back with it to the station. By that time his own portmanteau had disappeared. In an action by him against the company for the value of his property lost it was held that he had not been ready to take delivery of his luggage within a reasonable time of the arrival of the train; that at the expiration of such time the company's liability as carriers came to an end; that the subsequent loss was due to his own negligence; and that therefore the company were not liable. *Firth v. N. E. Ry. Co.* 36 W. R. 467; but where a company employ porters to carry passengers' luggage from the platform to the carriages or hired vehicles of the passengers, their liability as carriers continues until the porters have discharged their duty. *Richards v. L. B. & S. C. Ry. Co.* 7 C. B. 839; 18 L. J. C. P. 251; *Butcher v. L. & S. W. Ry. Co.* 24 L. J. C. P. 137; 16 C. B. 13; but where a passenger has claimed his luggage and agreed with a porter for him to put it on one side and take charge of it, the company are not liable, as the porter had then ceased to be acting as the company's agent. *Hodkinson v. L. & N. W. Ry. Co.* 14 Q. B. D. 228; *G. W. Ry. Co. v. Bunch* 13 App. Cas. 31; *Welch v. L. & N. W. Ry. Co.* 34 W. R. 166; *Angrill v. L. & N. W. Ry. Co.* 34 L. T. 134.

Refuse to accept unless properly labelled—Liability:—In England a company may refuse to accept the passenger's luggage unless it is properly labelled; but if they do accept the luggage not labelled, and the luggage is lost the fact that it was not labelled will of itself be no defence. *Cutler v. North London Ry. Co.* L. R. 19 Q. B. D. 64. In India however a railway company shall not be responsible for loss &c. unless the luggage is booked and a receipt given therefor.

Whether passenger entitled to claim delivery of luggage at any place short of destination:—Per Martin B:—"If a traveller by a railway is dissatisfied with his mode of travelling, he may at any point stop and require that his luggage should be delivered up to him" *Scothorn v. South Staffordshire Ry. Co.* 22 L. J. Ex. 121. The owner must, however, give his new direction to the company before the goods have reached the destination originally indicated (*Ibid*).

When the liability of a carrier is merged in that of a warehouseman:—(1) "When once the consignee is in fault by delaying to take away the goods beyond

a reasonable time, the obligation of the carrier becomes that of an ordinary bailee for hire, being confined to taking proper care of the goods as a warehouseman and he ceases to be liable in case of accident, such as loss by fire &c. What will amount to a reasonable time is sometimes a question of difficulty, but is a question of fact and not of law. *Chapman v. G. W. Ry. Co.* 5 Q. B. D. 281; See Sec. 72 p. 257.

(2). A railway company are only liable as ordinary warehouseman for luggage left at a "cloak room" or "Left luggage office." But a railway company are not bound to receive luggage into their warehouse upon the ordinary liability of a warehouseman, and they usually further limit their liability by conditions printed on the ticket given to the depositor. *Henderson v. Stevenson* L. R. 2 Sc. App. 470, *Van Toll v. S. E. Ry. Co.* (Supra) See also *Rocha v. Cork Blackrock &c. Ry. Co.* 21 L. R. Ir. 250. in which the passenger had deposited a bag containing money in a cloak room and received a ticket containing no conditions of limiting their liability. The company were held liable for loss of money.

(3). A condition upon a *Cloak room ticket* issued by a railway company that "they will not be responsible for any package exceeding 10 lbs, protects the company from liability, not only for the loss of an article deposited in the cloak room but also for damage or injury thereto while in their custody. *Pratt v. S. E. Ry. Co.* (1897). 1 Q. B. 718; *Harris v. G. W. Ry. Co.* 1 Q. B. D. 515; *Gibson v. G. E. Ry. Co.* (1920) 3 K. B. 689.

Ry. Servants have no right to enquire into the ownership of luggage:—Servants of railway company are not empowered to enquire into the ownership of luggage which passengers take with them when travelling. *Crown v. Parasram Punj.* C. C. Case No. 318 of 1903.

Lien for cloak room charges:—A railway company has a lien on articles deposited in cloak room against the owners for the cloak room charges. *Singer Manuf. Co. v. L. & S. W. Ry. Co.* (1894) 1 Q. B. 833; but if a thief deposits a stolen article in a cloak room, a railway company have no lien for charges, and no right whatever to detain the article from the rightful owner.

75. (1) When any articles mentioned in the second schedule are

contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless

the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged

to pay a percentage on the value so declared by way of compensation for increased risk.

(2) When any parcel or package of which the value has been declared under sub-section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule that a railway servant authorized in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

Scope of the section:—Sec. 74 refers to passenger's luggage, and S. 75 refers to another class, viz., articles packed in parcels or packages. That Schedule II only refers to articles, and neither to goods nor to animals nor to luggage, and that, under S. 75, the railway's liability is limited only when such articles as are mentioned in Sch. II are packed in parcels or packages. The receipt given to a passenger under S. 74 is a token of delivery to the railway administration for carriage by railway; and though the things which a passenger takes with him may be described as luggage, they are none the less parcels or packages; and if they contain scheduled articles which are not declared, the provisions of S. 75 are applicable to them.

Object of Sec. 75—Special value:—The object of Sec. 75 was to protect the railway companies from claims made in respect of loss or damage to articles of a special value, unless the nature of such articles had been previously declared and a special rate paid for the carriage thereof. The words "*Special value*" are misleading as many of the articles detailed in the II Schedule have no special value and protection was really necessary on account of their special nature, so that the railway companies might be put on notice to take precautions to ensure their safe transit. Some of the articles enumerated can be of great value within a small compass, others though large can be easily damaged. There is no general principle applicable to all except that they require special care by the railway company when performing the contract of carriage. An half anna postal stamp, a diamond, a watch must all be declared provided the value of the package is over Rs. 100, so that the intrinsic value is no test. *E. I. Ry. v. Dayabhai Vanmalidas* (1922) 67 Ind. Cas. 852; 24 Bom. L. R. 416; following *Saratchandra v. Secy of State* 39. Cal. 1029. However, for the meaning of the word special value appearing in the marginal note to S. 75 and clause (S.) of the

Schedule see *G. I. P. Ry. v. Chellaram* (1922) 65 Ind. Cas. 99; 41 Mad. L. J. R. 603 and *Sudershan Maharaj v. E. I. Ry.* 42 All 76.

Package, meaning of:—The word *package* seems to mean both that which is packed and that in which it is packed i.e. its covering or receptacle. *Kalidas v. E. I. Ry.* (1917) 21 Cal. W. N. 815 at p. 818; 40 Ind. Cas. 626.

Special value:—The use of the words "*Special value*" in the marginal note to Sec. 75 and clause (S) of the second schedule, does not imply that only articles falling within the description of the schedule which are of exceptional value must be declared under Sec. 75. *G. I. P. Ry. v. Chellaram* (1921) 41 Mad. L. J. 603; 65 Ind. Cas. 99. (*Sudarshan Maharaj v. E. I. Ry.* 42 All 76 referred to, and *Suratchandra v. Secy of State* 39 Cal. 1029 not approved).

Passenger's luggage is a package:—If a passenger gets his packages booked containing scheduled articles but fails to declare them and they are lost, the company would not be held liable as the passenger's luggage is a package within the meaning of sec. 75. *E. I. Ry. v. M. K. Roy.* 13 All. L. J. 658; 37 All 463; *Alwar v. Simla Kalka Ry.* No. 73 P. R. 1907=42 P. R. 386.

Contained in a parcel or package—meaning of:—The section only applies to the things mentioned when they are "contained in a parcel or package" and if any of the things mentioned in Schedule II were sent loose, (without any packing) the section would have no application and the company no protection. The company, however, would be justified in refusing to accept such articles if sent loose. The words "parcel or package" seem to be wide enough to include anything of any size in which things are packed. They include passenger's luggage. *Alwar v. Simla Kalka Ry.* (Supra) *E. I. Ry. v. M. K. Roy.* (Supra).

Thus in *Whaite v. L. & Y. Ry. Co.* L. R. 9. Ex. 67; 43 L. J. Ex. 47 pictures exceeding the value of £. 10 were laid upon one another without any covering or tie in the owner's waggon, which had sides but no top; the waggon was placed in a truck belonging to the defendant company. It was held that the pictures were "contained in a parcel or package within the meaning of S. 8 of English Carrier's Act so as to give the company the protection of the Act.

Delivery:—An inn at which the carrier is in the habit of receiving parcels has been held to be an office or receiving house within the meaning of this section. *Stephens v. L. & S. W. Ry. Co.* 18 Q. B. D. 121, delivery to a servant of the carrier on the road is a good delivery. *Barendale v. Hart* 6 Ex. 769; 21 L. J. Ex. 123.

Delivered to a railway administration for carriage:—S. 75 is applicable to articles delivered to a railway administration for carriage; if a passenger takes with him in the compartment in which he is travelling a parcel or package without the same being booked and a receipt obtained therefor as required by S. 74, the railway administration is not responsible for its loss &c. whether the scheduled articles are of the value of Rs. 100 or not.

Value of articles:—"Value" does not mean cost of an article in a package delivered to railway company for carriage but it means intrinsic value at the

time the parcel is delivered. *Stoessiger v. S. E. Ry. Co.* 23 L. J. Q. B. 293; 3 L. & B. 549. "It" means that value at destination, and not at the place of dispatch which represents the proper measure of damages in the event of loss of goods. It also means market value of the articles, the price for which they would usually sell at the time in the market; as well as the value in the market independently of any circumstances peculiar to the plaintiff. *Secy of State for India v. Lorida Ram Sindh* (1894) 31st December, *Ramchandra v. G. I. P. Ry.* 20 Bom. L. R. 591; 44 Ind. Cas. 401; *Redmayne v. G. W. Ry. Co.* L. R. 1 C. P. 329; For the purpose of this section the value of the goods is the price the consignee has agreed to pay and not the price at which the consignor bought them; for example, where plaintiff bought goods for £9-19 s. and agreed to sell them to the consignee for over £10 and they were lost in transit, it was held that the company were not liable for their loss as the value exceeded £10. *Blankensee v. L. & N. W. Ry. Co.* 45 L. T. 761.

Loss by criminal not of company's servants—liability of company how far:—The words loss, destruction or deterioration in S. 75 (1), include loss caused by the criminal misappropriation of the parcel by a servant of the railway administration in charge thereof. *Balaram v. S. M. Ry. Co.* 19 Bom. 159; *Venkatchala v. S. I. Ry. Co.* 5 Mad. 208; *Bradley v. Waterhouse* 3 C. & P. 318.

"Loss" in the English Carrier's Act means a loss by the carrier, such as by abstraction by a stranger, or by his own servants not feloniously, or by losing them from vehicles in the course of carriage, or by mislaying them, so as not to know where to find them, and the like; it includes temporary as well as permanent loss. *Hearn v. L. & S. W. Ry. Co.* 24 L. J. Ex. 180; *Millan v. Brash* 10 Q. B. D. 142. The loss for which a railway company is protected from liability must be loss to the railway company itself while the goods are in the custody of the railway Co. in their capacity as carriers and cannot apply to a loss to the owner. *Ramchandra v. G. I. P. Ry.* 20 Bom. L. R. 591; 21 Bom. L. R. 6; 43 Bom. 386; 49 Ind. Cas. 396.

Meaning of loss—effect of misdelivery:—The loss for which a Ry. Co. is protected from liability by S. 75 of the Railways Act must be loss to the Ry. Co. itself and it must be loss which occurs while the goods are in the custody of the company in their capacity as carriers and cannot apply to a loss to owner. Negligent misdelivery of goods to a person other than the owner is not such a loss as is contemplated by S. 75 of the Rys. Act. *Ramchandra v. G. I. P. Ry.* 20 Bom. L. R. 591; 44 Ind. Cas. 401.

Of the parcel or package:—Under the present section (75) protection extends to the entire parcel or package, including the articles which should, and those which need not have been declared. The words "Of the parcel or package" in this section form an alteration of the law under S. 11 of the repealed Act IV of 1879 and S. 10 of the Act XVIII of 1854, protection was only extended to the contents of the parcel, which should have been declared under those Acts. In Section 11

the Act IV of 1879, the words material for this case, are "the carrier by railway shall not be liable for loss, &c., to *such property* unless the value, &c., are declared." In the Act IX of 1890, the words loss, &c., of the *parcel or package* are substituted for *loss of such property*. *Pundlik v. S. M. Ry. Co.* 11 Bom. L. R. 827 at p. 823 = 33 Bom. 703. See also *Mahomed Abdul v. The Secretary of State* 56 P. R. 1879.

But the English Law is quite different from this. According to that Law where a packing case contains articles, some within the statute and some not, the value of the case and of the article not within the statute may be recovered, though the statute has not been complied with as regards the articles within the statute. *Treadwin v. G. E. Ry. Co.* 37 L. J. C. P. 83.

Protection extends to all articles in the package:—Section 75 clearly shows that the protection afforded by that section, extends not only to the articles containing tissue and lace (which ought to have been insured), but also to all other articles contained in the parcel in which the above articles were placed. *G. I. P. Ry. v. Shani Manohar* 9 All. L. J. 492 = 34 All. 422.

If goods the insurance of which is obligatory, are packed uninsured with other goods, the insurance of which is not obligatory, no compensation is obtainable for the loss of either class of goods. *G. I. P. Ry. v. Shani Manohar* (Supra). (*Pundlik v. S. M. Ry.* 11 Bom. L. R. 827, = 33 Bom. 703 followed). *Narajandas v. E. I. Ry.* 34 All. 656, = 10 All. L. J. 297; 13 Lawyer 921; *E. I. Ry. Co. v. Changan & others* 22 Cal. L. J. 212 = 19 Cal. W. R. 1034 = 42 Cal. 888.

Caused its value and contents to be declared:—It is necessary that both value and contents of a parcel (if over Rs. 100 in value) should be declared before the railway administration can be held liable in respect thereof. *Illoor v. G. I. P. Ry.* 2 Mad. 310; *M' Crow v. G. W. Ry. Co.* 40 L. J. Q. B. 300; *Casswell v. Cheshire Lines Committee* (1907) 2 K. B. 499.

The payment by the consignor of silver coin of the specie rate required by the general regulations of a railway company to be paid for the carriage of such goods is not *such a payment* as satisfies the requirements of Section 75.

The section distinctly states that the person delivering the package to the administration must cause the "*value and contents*" to be declared, or declare them. The declaration of the value has become a far more important incident under Act IX of 1890, in as much as the consignor must give the administration the opportunity of claiming a percentage on the value declared by way of compensation for increased risk. Unless the *value be declared*, the percentage cannot be ascertained or asked for. The declaration of the value must, therefore, be regarded as a *condition precedent* to the attaching of the responsibility of the defendant company. It would not be *obligatory* on the deft. company to enquire what the value was. This must be declared by the sender. The administration must also have the opportunity of demanding a percentage. *Balaram v. S. M. Ry. Co.* 19 Bom. 159; *Narang Rai v. R. S. Navigation Co.* 34 Cal. 419 = 11 C. W. N. 1071; *Assa*

Nund v. The Indian Carrying Co. 13 P. R. 1866; *S. P. & D. Ry. Co. v. Rustam-khan* 29 P. R. 1872; *Jeyta Nund v. The Punjab Ry. Co.* 91 P. R. 1868.

To establish the liability of a Ry. Co. in the case of excepted articles, the declaration required by this section must be made in such a manner as to intimate that the sender invites the company to undertake the special risk and is willing to pay the special rates *M. Venkatachala v. S. I. Ry. Co.* 5 Mad. 208; *Robinson v. L. & S. W. Ry. Co.* 34 L. J. C. P. 231.

Declaration.—A declaration would be within the Statute if so made as to create a liability on the part of the company to pay the higher value, as well as a liability on the part of the sender to pay the insurance thereon," *Robinson v. L. & S. W. Ry. Co.* 34 L. J. C. P. 231 at p. 238. A declaration as to the nature and description of goods under the Customs Consolidation Act is not a declaration within the section *Hirschel Meyer v. G. E. Ry. Co.* (1906) 22 T. L. R. 661.

The declaration must come from the sender and must be so expressed as to be understood by the carrier as such and understood also as the foundation of a contract. To be within the Statute it must be made with the intention that it should so operate as to entitle the company to charge the higher rate; that it must be made in such a manner as to intimate that the sender invites the company to undertake the special risk, and is willing to pay the increased charge, *Dooy v. London & N. W. Ry.* (1919) 1 K. B. 623.

A mere casual conversation as to the contents of the parcel taking place before the parcel clerk, through which he becomes acquainted with its value, does not bind the company to make good its contents or operate as an increased charge for the safe conveyance of the same or an engagement to pay such charge accepted by a railway servant specially authorized in this behalf. *G. I. P. Ry. Co. v. Raisett* 19 Bom. 165 at pp. 180 & 194; *Venkatachalla v. S. I. Ry. Co.* 5 Mad. 208; *Behrens v. G. N. Ry. Co.* 6 H. & N. 366; 30 L. J. Ex. 153. But if the sender requests the Co. to take special care of the contents and on being asked by it to declare the same he shows a list of them but it does not require him to pay any extra charge and gives him a receipt on the back of which is printed a bye-law which declared that the Co. is not responsible for any loss, destruction or deterioration of goods and the goods are damaged in transit,—Held that the above declaration was a sufficient declaration within the meaning of sec. 75 and the company not having demanded any extra payment were not exonerated from liability by reason of the provision of that section. Held further that the bye-law framed under sec. 75 so far as it made the making of a demand from the owner of the goods unnecessary was *ultra vires*. The bye-law could not be considered as amounting to a demand and a reference to them on the receipt did not affect the sender. (*G. I. P. Ry. v. Rai Shett* 19 Bom. 165 distinguished) *Rohit-khand and Kumaon Ry. v. Jagdumba Sahai* 7 All. L. J. 606.

A railway company is entitled to have express declaration from the sender or his agent of the contents of a package at the time of delivery to the company,

however obvious to conjecture the nature of the contents may be. *Day v. Pink*. 8 Car. & P. 361; *Doey v. London & N. W. Ry. Co.* (1919) 1 K. B. 623. *Owen v. Burnett* 2 C. & M. 335; 3 L. J. Ex. 76. (To write outside the package the nature of the contents is not a sufficient declaration). The box marked outside 'glass' does not amount to such notice. *Cahil v. L. & N. W. Ry.* 7 Jur. (N. S.) 1164. *Hart v. Baxendale* 21 L. J. Ex. 123. *Hinton v. Dibbin* 2 Q. B. 646.

Paid or engaged to pay a percentage * * * by way of compensation for increased risk:—In addition to the ordinary rate the company makes an extra charge for what they call "insurance" in the case of the valuable articles specified in the schedule to Section 11 of Act IV of 1879. In the company's tariff of charges they say referring to Section 11 of the Act that they are not responsible for loss * * * of gold, silver, &c., "unless an increased charge for the safe conveyance of the same is paid." This can mean nothing else than an increased charge over the ordinary charge for the carriage of the particular article specified in the tariff. *Pankatachala v. S. I. Ry. Co.* 5 Mad. 208, 213; *Secretary of State v. Budanath* 19 Cal. 538.

Increased charge:—The Act no doubt requires as a condition on which the immunity of the Ry. Co. depends that they should have accepted an increased charge implying on their part a demand for it. Increased charge is not increased payment and the Act leaves untouched the right of the railway company to refuse to take goods unless the hire is first paid and repayment may be made a term upon which the railway company may insist under the power given to them of accepting. *Jeyu Nand v. The Punjab Ry. Co.* 91 P. R. 1868.

"Increased charge" is not levied on the weight of the article carried, but on its value. A common carrier in England is often spoken of as an "insurer" not because he "insures", but because he warrants or contracts that he will (with specified exceptions) carry and deliver the goods entrusted to him safely. *Berghien v. The Great Eastern Ry. Co.* 3 C. P. D. 221. In the case of articles of small bulk and great value (being above the value of £ 10) the Carriers Act II Geo. IV and Will. IV C. 68, enacted that a carrier should not be liable for their loss unless an increased rate of charge was paid *over and above* the ordinary rate. Hence Judges in England have referred to the payment of such increased charge as an "insurance."

In *Behrens v. Great N. Ry. Co.* 30 L. J. Ex. 153; 6 H. & N. 366. Wills. B. pointed out the usual steps in such cases under that Act (1) "The sender must first declare the value of the parcel (2) then the carrier must demand the extra rate which the sender either pays and is insured or the sender refuses to pay and insure himself and then the carrier takes the parcel." See also *G. I. P. Ry. Co. v. Rai Sutt* 19 Bom. 165 at pp. 190, 191.

How far protection extends:—The protection conferred by S. 10 of Act XVIII of 1854 (S. 75 of Act IX 1890) extends till such time as the consignee takes delivery and does not terminate on the arrival of the articles at their destination. *Illoor v. G. I. P. Ry.* 2 Mad. 310. It also extends to cases where the

goods mentioned in the 2nd schedule are put out at a station short of their destination or carried beyond it or sent on a wrong journey altogether, *Morritt v. N. E. Ry. Co.* 1 Q. B. D. 302; *Miller v. Brasch* 10 Q. B. D. 142; or to cases of delivery to the wrong person by mistake but not to a case where the goods are delivered to a person who is known to be the consignee. *Morritt v. N. E. Ry. Co.* (supra). It also extends as well to a temporary as to a permanent loss and damages cannot be recovered for the consequences of the loss in either case. *Wallage v. Dublin & Belfast Ry. Co.* 1 B. 8 C. L. 341; *Miller v. Brasch* (Supra) the carrier is also protected by this section even if there is gross negligence. *Hinton v. Dibbin* 2 Q. B. 646.

Goods referred to in sec. 75 consigned on a risk note—company not liable for loss:—When a person chooses to send goods referred to in sec. 75 on a risk note form, instead of declaring them and paying the extra percentage demandable under the terms of the section he cannot hold the Co. by which such goods are sent responsible for the loss thereof. *Narayandas v. E. I. Ry. Co.* 34 All. 656; 10 All. L. J. 297. (*Hearn v. London & S. E. Ry. Co.* 10 Ex. C. 793 referred to).

Liability of railway as regards passenger's luggage:—Sections 72 and 74 are applicable to passenger's luggage, and in the case of articles of special value, which are being carried as passenger's luggage, the provisions of this section, (Section 75 of Act IX of 1890) must be complied with according to Section 74 unless the passenger's luggage has been booked and a receipt given for the same, the railway administration is not responsible for its loss, &c. *Mahomed Abdul v. Secretary of State* 56 P. R. 1897; *Dyke v. S. E. Ry. Co.* 17 T. L. R. 651; *Alwas v. Simla Kalka Ry.* 73 P. R. 1907; 15 P. L. R. 1908.

Omitting to demand an increased charge—liability of railway administration:—If after declaration made by the sender of an excepted article entitling the railway company to secure an increased charge, the goods are carried at the ordinary rates, the sender will be entitled to recover in case of loss.

The conditions of this section are not fulfilled by the sender merely by giving an account of the quantity and description of the goods delivered for carriage when required to do so by the booking clerk, *Venkatachala v. S. I. Ry. Co.* 5 Mad. 208. *Behrens v. The G. N. Ry. Co.* 6 H. & N. 366; 7 H. & N. 950; *Secy of State v. Budanath* 10 Cal. 538; *Rohilkhand & Kumaon Ry. v. Jagdumba* 7 All. L. J. 606.

A bye-law making demand of insurance charges unnecessary is ultra vires:—A bye-law framed under this section so far as it makes the demand of insurance charges from the owner of the goods unnecessary is ultra vires. It could not be considered as amounting to a demand and its reference on the receipt does not affect the sender. *Rohilkhand & Kumaon Ry. v. Jagdumba Sahai* (Supra).

Insurable interest in goods:—A railway company may insure goods in their possession describing them as "goods in trust as carriers," and such an in-

surance will cover the whole value of the goods, and if the goods are destroyed by fire, they will be entitled to recover of the insurer their full value and it will make no difference that under the statute, or by special contract, the carriers were not responsible for losses by fire. *L. & N. W. Ry. Co. v. Glyn* 28 L. J. Q. B. 188; *Hill v. Scot* (1905) 2 Q. B. 371.

Contract to carry partly by water and partly by land not divisible:—In a suit for damages for loss of goods carried partly by steamers of one company and partly by trains of another, the plaintiff failed to declare the value and description of the goods as required under the provisions of the Carriers' Act and the Railways' Act:—Held that so far as the journey is by river, the steamer company is entitled, as regards the acts of its agents and servants, to protection afforded by the provision of the Carriers' Act and so far as the journey is by rail, it is similarly entitled, to claim the protection afforded by the Railway Act and that such a contract was not divisible. *Narang Rai. v. R. S. Navigation Co.* 34 Cal. 419; *Le Conteur v. L. & S. Ry. Co.* L. R. 1 Q. B. 54; 35 L. J. Q. B. 40; *Baxendale v. G. E. Ry. Co.* L. R. 4 Q. B. 24; 38 L. J. Q. B. 137. *Pisciani v. L. & S. W. Ry. Co.* 18 C. B. 226. *Gokalchandra v. I. G. S. N. & Ry. Co. Ltd.* 11 Cal. W. N. 1076.

Test to be applied in appraising value of goods:—In considering what is the value of the goods, the true test of the worth of an article is its value to the consignor. And the criterion by which the value is to be appraised is not the cost of manufacture or importation but the sum which his consignee has contracted to pay him for them.

The following articles, if above the value of Rs. 100, must be declared:—

- (1) Gold, and silver coined or uncoined, manufactured or unmanufactured. See *Secy. of State for India v. Budanath* 19 Cal. 538; *G. I. P. Ry. Co. v. Rai Sett* 19 Bom. 165. *Balaram v. S. M. Ry.* 19 Bom. 259
- (2) Plated articles.
- (3) Cloth and tissue and lace of which gold or silver forms part, not being the uniform &c. or part of the uniform of an officer &c.
- (4) Pearls, precious stones, jewellery and trinkets.

Trinkets:—Ivory, Ivory fans, black and agate bracelets, shirt-pins, rings (includes common gilt rings), brooches, and ornamented tortoise shell and pearl porthonnaires, however small their intrinsic value, if made part of the ornament of apparel; and gold chain for eye-glass fall within the definition of trinkets; but plain German silver pocket match boxes are not so. *Berstein v. Baxendale* 6 C. B. 251; 28 L. J. C. P. 265 (An eye-glass attached to a gold chain was held not a trinket in *Davey v. Mason & Co.* 45 &c. overruled). Fusee boxes made of brass but not ornamental are not trinkets. See case supra.

- 5) Watches, clocks and time-pieces of any descriptions.

Time-pieces.—This includes a ship's chronometer *Le Contour v. L. & S. W. Ry. Co.* 35 L. J. Q. B. 40.

- (6) Government securities.

- (7) Government Stamps.

- (8) Bills of Exchange, Hundis, Promissory notes, Bank notes, and Orders or other securities for payment of money.

Bill of Exchange.—A document in the form of a bill of exchange, accepted by the person to whom it was directed, but having no drawer and found by the Jury to be of no value when delivered to carriers, is not within the Act as a "bill of exchange" nor an order for payment of money. *Stoessiger v. S. E. Ry. Co.* 23 L. J. Q. B. 293.

Currency Notes.—This clause covers currency notes as they are promises to pay made by a person on behalf of the Govt. of India, although they are not included in the definition of Promissory Note in Sec. 4 of the Negotiable Instrument Act, *Atwas. v. Simla Kalka Railway* 73 P. R. 1907.

- (9) Maps, Writings and Title-deeds.

Maps.—This includes a case containing a set of maps *Wyld v. Pickford* 8 M. & W. 443.

Writings.—Include account books. *Ramchandra v. G.I.P. Ry.* 20 Bom. L. R. 591. See also Bill of Exchange.

- (10) Paintings, Engravings, Lithographs, Photographs, Carving, Sculpture and other works of Art.

Paintings.—The word "paintings" is used in its ordinary and popular sense to denote works of art.

Coloured imitations of rugs and carpets and coloured working designs, each of them valuable and designed by skilled persons and hand painted, but having no value as works of art are not paintings. *Woodward v. L. & N. W. Ry. Co.* 47 L. J. Ex. D. 263; 3 Ex. D. 121; This includes artist's pencil sketches. *Mylton v. Midland Ry. Co.* 28 L. J. Ex. 385; 4 H. & N. 615. It seems painting includes the frame as well as the picture because the picture and frame are to be considered as one article. The frame not only forms part of the picture but is ordinarily necessary for its security *Henderson v. L. & N. W. Ry. Co.* L. R. 5 Ex. 90; 39 L. J. Ex. 55). Where a lace corporal was placed in a frame for the purpose of exhibition, the

frame was held to be not necessary, but a separate article, *Treadwin v. G. E. Ry. Co.* L. R. 3 C. P. 308; *Henderson v. L. & N. W. Ry. Co.* L. R. 5. Ex. 90; 39 L. J. Ex. 55.

Engravings:—These include prints and coloured prints. *Boys v. Pink* 8 Car. & P. 361.

(11) Art pottery and all articles made of Glass, China or Marble.

Art Pottery:—Terra-Cotta busts were held not to be "statuary" but they may fall within the term "art pottery". *Sutton & Co. v. Cicari & Co.* 15 App. Cas. 144.

Glass:—The term "glass" comprises every article in which it forms one of the component parts, whether it be permanently affixed to the fabric or not—thus the carrier is not liable for the glass in a picture frame, although he may be responsible for the frame itself—and the term includes smelling bottles, glass flacons (*Berstein v. Bazendale* 6 C. B. N. S. 251); and sheets of plate glass and looking glasses. *Owen v. Burnett* 3 L. J. Ex. 76; 2 Car. & M. 353; but not optical glasses and photographic apparatus as they do not fall within the articles mentioned in the schedule. *Levi Jones v. Cheshire Line Committee* (1901) 17 T. L. R. 443. No representations can be relied on as estoppels if they have been induced by the concealment of any material fact on the part of those who seek to use them as such; and if the person to whom they are made knows something which, if revealed, would have been calculated to influence the other to hesitate or seek for further information before speaking positively, and that something has been withheld, the representation ought not to be treated as estoppel. Two parcels containing excepted articles of the value of over Rs. 100, (silver plated table lamp and cut glass bowl) were delivered to the railway company for transmission with the words labelled "glass with care" and insured. They were damaged in transit, but as the value and the nature of the property were not declared at the time of delivery the company was held not liable. *Doey v. London & N. W. Ry. Co.* (1919) 1 K. B. 623; *Porter v. Moore* (1904) 2 Ch. 367.

(12) Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.

Silk:—The expression "silk" includes silk watch guards, silk tights and hose, silk stockings—*Hart v. Bazendale* 6 Ex. 769; 21 L. J. Ex. 123; elastic silk webbing—*Brunt v. Mid. Ry. Co.* 2 H. & C. 389; 33 L. J. Ex. 187; (in which the proportion of silk, though relatively more valuable than the India rubber and cotton with which it was mixed, was actually less than either of the other component parts);

a truss of silk.—*Butt v. G. W. Ry. Co.* 20 L. J. C. P. 241; 11 C.B. 140; and silk dresses made up for wear. *Flowers v. S. E. Ry. Co.* 16 L. T. 329; *Millen v. Brasch* L. R. 10, Q. B. D. 142. Also Endi Cloth.—*Narang Rai v. R. S. N. Co. Ltd.* 11 Cal. W. N. 1071; and Malka silk fall under the expression "silk". *Gocul Chander v. J. G. S. N. & Ry. Co. Ltd.* 11 Cal. W. N. 1076.

In determining whether or not cotton fabrics wrought up with silk are "silks" in a manufactured or unmanufactured state, &c., under clause (i) of Sch. II of Act IX of 1890, the proper test to apply is to ascertain whether there is a sufficient preponderance of silk in the article. *E. I. Ry. Co. v. Changay Khan* 22 Cal. L. J. 212, = 42 Cal. 888 = 28 I. C. 245; *Brunt v. Mid. Ry. Co.* 33 L. J. Ex. 187. If it be not, the fabric cannot be considered to be 'silk' within the meaning of the Act, *Lakshmidas v. G. I. P. Ry.* 4 B. H. C. O. C. 129. *The Secretary of State v. Loida Ram*, Sind Sudder Court 1894.

A cloth composed of silk and cotton thread, $\frac{1}{3}$ being silk and $\frac{2}{3}$ cotton, the proportionate value of silk and cotton being one to four and a half does not come within the meaning of the term "silks" *Saminadha v. S. I. Ry. Co.* 6 Mad. 422; so the frame of a silk vestment not usually framed. *Treadwin v. G. E. Ry. Co.* (Supra).

The question whether silk in a manufactured or unmanufactured state is to be treated as silk within the meaning of the act is a question of fact and each case must depend on its own circumstances. *E. I. Ry. Co. v. Changaykhan* (Supra).

(13) Shawls.

Whether shawls should be of special value:—The term "shawls" in clause (M), of schedule II of the Indian Rys. Act refers to costly, woolen fabrics and not to articles of cheap manufacture. *E. I. Ry. v. Dayabhai* (1922) 24 Bom. L. R. 416 (*Sarat Chandra v. Secy of State* 39 Cal. 1029 followed); but a contrary view has been held in *G. I. P. Ry. v. Chellaram* 41 Mad. L. J. R. 603; 65 Ind. Cas. 99 following *Sudarshan Maharaj v. E. I. Ry.* 42 All. 76, to the effect that the shawls need not be Kashmiri shawls, nor made of wool, nor articles of comparatively high value, provided, that the value of the articles in the parcel exceeded Rs. 100/, in all, and that they were shawls or known as shawls.

(14) Lace and Furs.

Lace:—Lace includes hand made as well as machine made lace. *Sudarshan v. E. I. Ry.* 42 All. 76; 17 A. L. J. R. 1031. A lace does not include a gilt frame nor a packing case in which the same was enclosed because gilt frame is distinct from and not necessary to the lace. *Treadwin v. G. E. Ry.* (Supra).

Furs:—Bodies which are made partly of the soft substance, which taken from the skin of rabbits, and partly from the wool of .

do not come under the description of 'furs'. *Mayhew v. Nelson*
6 Car. & P. 58.

(15) Opium.

(16) Narcotic preparations of hemp such as Ganja, Charas, Bhang &c.

(17) Ivory, Ebony, Coral and Sandal wood.

Ivory fans. *A. G. v. Hartly* 5 Russ. 173.

(18) Ember, Musk, Sandal wood oil, and other essential oils used in the preparation of iter or other perfume.

(19) Musical and Scientific instruments.

(20) Crude India rubber. (21) Feathers. (22) Gooroochand or Gooroochandan. (23) Itr. (24) Zahir Mohra Khatal. (25) Cinematograph films and apparatus.

(26) Any article of special value which the Governor-General in Council may, by notification in the Gazette of India, add to the schedule.

When a parcel or package is described as containing any of the articles mentioned above the sender is required to declare *in writing* its value on the consignment note, and, if the value of the articles *be declared as exceeding* Rs. 100, to fill up the special form of consignment note for excepted articles and declare therein whether *he desires to insure* the articles by paying the extra insurance charge. Should he decline to insure, the parcel or package will be despatched as "*uninsured*." Risk Note Form X should invariably be executed by the sender, unless Risk Note Form Y has already been executed. A remark "Risk Note Form X or Y held", as the case may be will be made on the consignment Note, Railway Receipt and Invoice.

Loss, destruction &c.—For this see pp. 217 & 263.

Burden of proof:—The burden is all thrown by this Act upon the customer to declare both the value and nature and to tender the increased charge and on the Co. to show that they had on the spot a specially authorised agent duly instructed and ready and willing to receive the enhanced rate if tendered. *Sindh Punjab & Delhi Ry. Co. v. Rustamkhan* 29 P. R. 1872. A party setting up a tort has the burden on him to prove such tort. If the cause of action be negligence, deceit or fraud or the like, the plaintiff must prove the negligence, deceit or fraud. If to a tort, justification is set up by the deft, the burden is on him to prove such justification. The general rule therefore is that the burden lies on the party seeking either to make good his claim for damages arising from the tort of another or to establish a release from such claim, supposing it to be made out against himself, by imputing tort to the plaintiff. In a suit for a tort the onus is on the plaintiff to prove that the malfeasance, misfeasance, non-feasance, or other event from which limitation commences to run took place within the prescribed period upon the general principles which regulate the burden of proof on the point of limitation (Amirali on Evidence 1st. Ed. p. 644.)

76. In any suit against a railway administration for compensation for loss, destruction or deterioration of animals or goods delivered to a railway administration for carriage by railway, it shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused.

Burden of proof in suits in respect of loss of animals or goods.

Duty of company towards goods consigned before and after the occurrence of risk:—The obligation of railway company towards the consignor of goods includes not only the duty of taking all reasonable precautions to obviate risk, but the duty of taking all proper measures for the protection of the goods when the risk has actually occurred. (*Brabant & Co. v. King* (1895) A. C. 640). *Lukhichand v. G. I. P. Ry.* 14 Bom. L. R. 165 = 37 Bom. 1.

Burden of proof on the company:—(a). When goods have not been delivered to the consignee at the place of destination, the plaintiff need not prove how the loss occurred; the burden lies upon the bailee to prove the existence of circumstances which exonerate him from liability for the loss. *Surendra Lal v. Secy. of State* (1917) 25 Cal. L. J. 37; 38 Ind. Cases 702; *Shesham v. Moss* 17 Mad. 445; *Scheepster Putz & Co. v. E. B. Ry. Co.* 21 Smith, W. R. 380; *G. I. P. Ry. v. Kunayalal* 48 Ind. Cas. 294; 14 N. L. R. 122.

(b). The plaintiff must prove his case and the mere fact that the defendant cannot explain the cause of an accident does not of itself render him liable. *Mefarlane v. Thomson*. (1884) Sc. L. R. 179; unless the circumstances are such as to call upon him for an explanation. *Walton Co. v. Vanguard Motorbus Co. Ltd.* (1908) 25 T. L. R. 13.

(c). Where goods are delivered to a railway company for carriage not "at owner's risk," and such goods are lost or destroyed while in the custody of the company, it is not for the owner suing for compensation for such loss or destruction to prove negligence on the part of the company but when the owner has proved delivery to the company, it is for the company to prove that they have exercised the care required by the Indian Contract Act of bailees for hire. *Nanku Ram v. I. M. Ry. Co.* 22 All. 361; *Plowden v. S. P. & D. Ry. Co.* P. R. 127 of 1882 (civil); *Santok Rai v. E. I. Ry. Co.* 2 Agra 200; *Ishwardas v. G. I. P. Ry.* 3 Bom. 120; *River Steam Navigation Co. v. Chotu Mull* 26 Cal. 398; *I. G. S. N. Co. v. Bhagwanchandra* 17 Cal. W. N. 633; 17 Cal. L. J. 639; *Akhilchandra v. I. G. N. Ry. Co.* (1915) 21 Cal. L. J. 565. Section 76 does not increase the onus of proof laid upon the railway company by section 151 of the Indian Contract Act. *Lakhichand v. G. I. P. Ry.* 14 Bom. L. R. 165 = 37 Bom. 1.

(d). A horse carried by the defendant railway Company was injured on the way and died a few days after. The horse was not carried "at owner's risk" nor was it insured. In a suit for damages, the plaintiff alleged in the plaint that the accident was due to a defect in the horse-box, but failed to prove it and his

suit was thereupon dismissed. Held, on appeal, that the burden of proof lay upon the defendant company under section 72 of the Railways Act to prove that it discharged the duty of a bailee under section 151 of the Contract Act. The burden would only be discharged by proof that the horse-box was in all respects sufficiently fitted and adequately secured and that on the journey such precautions as ordinary prudence dictates were taken by the company's servants. The burden of proof cannot be affected by the fact the plaintiff had put forward and failed to make good a theory of his own to account for the accident. *Babu Haridas v. B. B. & C. I. Ry.* 3 N. L. R. 94.

- (c). Where there is a through booking of goods which necessitates their being carried over lines owned by different companies, a condition limiting the liability of the contracting company to wilful misconduct of its servants on its own line is valid; but when the goods are damaged in transit the onus of proving that they were not damaged by the wilful misconduct of the servants of the contracting company on its line lies on the contracting company. *Mahoney v. Waterford Limeric & Western Ry.* (1900) 10 Ir. R. 203.

Burden of proof—not on the Company:—(a). Where goods are carried by a railway company under the terms of a "Risk note" . . . it is not liable for failure to deliver the goods lost in transit. If the consignor should assert that the goods were not lost, but were delivered to a wrong person, the onus lay upon him to prove his case. The onus is on the plaintiff to show that the circumstances under which the goods disappeared were not such as to amount to "loss" within the meaning of the "Risk Note"; the railway company is not bound to show by affirmative evidence that it has lost the goods. *Mulji Dhanji v. S. M. Ry. Co.* 14 Mad. L. J. 396; See also 24 Bom. L. R. 272; 39 All. 418.

- (b). If the goods had undergone *deterioration* in value or otherwise, the burden is on the plff. to prove the damage occasioned to him thereby. *Madras Ry. Co. v. Govind Rao* 21 Mad. 172.
- (c). A railway company is not under any obligation to disprove what was not proved. *E. I. Ry. Co. v. Kalidas Mukerji* 28 Cal. 401. at p. 408.

Onus in cases where company do not admit liability under a special contract:—Where a contract stated that in certain circumstances the company "do not admit liability" it was held that these words merely put the onus of proof on the consignor. *G. W. Ry. Co. v. McCarthy* 12 App. 218.

77. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway, or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf

Notification of claims to refunds of overcharges and to compensation for losses.

to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

Railway Administration:—See S. 3 Cl. 6. p. 5.

Shall not be entitled &c.:—The language of the section is imperative and absolutely debars a court from entertaining a suit instituted without compliance with the provisions of this section.

Deterioration:—Though the diversion of goods by mistake of the company's servants might amount to a breach of the contract on their part, it could not be described as a tortious or wrongful act and the plff's claim therefore falls within the terms of S. 77 which deals with claims for *Deterioration* of goods to be carried by Railway. *Shanker v. South Indian Railway*. 46 Bom. 176.

Overcharge:—The overcharge referred to in the section is not confined in its meaning to an overcharge recovered before the delivery of the goods to the consignee at destination. *G. I. P. Ry. v. Dewsey* 31 Bom. 534; See also 29 K. L. R. 216.

"Overcharge" is defined as a charge of more than is permitted by law. *Woodman v. Rio grande* 67 Tex 418.

Notice must be directed to the Manager or Agent:—A notice of claim to recover compensation for short delivery or for loss, destruction or deterioration of animals or goods delivered for carriage or for a refund of an overcharge in respect of animals or goods carried by railway must be served on the *Manager or Agent* of a railway administration in compliance with the provisions of Ss. 77 and 140 of The Indian Railways Act. *B. B. & C. I. Ry. v. Santilal* 26 All. 207; *G. I. P. Ry. v. Chandra Bai* 28 All. 552 = 3 All. L. J. 329; *G. I. P. Ry. v. Ganpat Rai* 33 All. 544; *E. I. Ry. v. Jethmull* 26 Bom. 669; 4 Bom. L. R. 495. *G. I. P. Ry. v. Dewsey* 31 Bom. 534 = 9 Bom. L. R. 942; *Secy of State of India v. Dipchand* 24 Cal. 306; *Nadirchand v. Wood* 35 Cal. 194; *Jankidas v. B. N. Ry. Co.* 16 Cal. W. N. 356 = 15 Cal. L. J. 211; *E. I. Ry. v. Madholal* 17 Cal. W. N. 1134 = 18 Cal. L. J. 147; *Radha Kissen v. E. I. Ry.* 19 Cal. W. N. 62. *E. I. Ry. v. Rangati* 19 Cal. L. J. 180; *Mani Conda* In re. 10 Mad. L. T. 236; *M. S. Chetti v. H. M. Nizam State Ry.* 36 Mad. 65; *Deo Rao v. G. I. P. Ry.* 8 Nag. L. R. 34 (*Perianam Chetty v. South India Ry.* 22 Mad. 137 dissented from and *Wood v. Meher ali* 13 Cal. W. N. 24 explained & distinguished). *Kalachand v. Secy. of State* 21 Cal. W. N. 751; 38 Ind. Cas. 844; *Agent & Manager S. I. Ry. v. Vengu Pattar* 10 M. L. T. 382; 21 Mad. 1061; 12 Ind. Cas. 169; *Shanker v. S. I. Railway* (1921) 23 Bom. L. R. 866; 64 Ind. Cas. 390.

The word "may" in s. 140 of the Indian Railways Act means that if a person is desirous of serving an effective notice of claim, the notice must be directed to the Manager or Agent as the case may be, *Nadiarchand v. Wood* 35 Cal. 194; *G. I. P. Ry. v. Chandrabai* 28 All. 552; The word "may" means *must*. *Martin & Co. Managing Agents, Bakhtiarpur Behar Light Ry. Co. Ltd. v. Fakirchand Sahu* 14 Cal. W. N. 888; 12 Cal. L. J. 14.

Notice not sufficient:—When (1) Notice given to the General Traffic Manager or to the Traffic Manager *G. I. P. Ry. v. Dewsey* 31 Bom. 53; *Nadiar-*

chand v. Wood 35 Cal. 194; *G. I. P. Ry. v. Chandra Bai* 28 All. 552; *Mani Conda* 10 Mad. L. T. 236; *M. S. Chetti v. H. M. Nizam State Ry.* 36 Mad. 65; *Des Rao v. G. I. P. Ry.* 13 Lawyer 405; 8 Nag. L. R. 34; *Kalachand v. Secy of State* 21 Cal. W. N. 751; 38 Ind. Cas. 844. (2) or notice given to the Divisional Traffic Manager *E. I. Ry. Co. v. Madholal* 17 Cal. W. N. 1131, *Ramsahai v. E. I. Ry.* (1922) 66 Ind. Cas. 578; (3) or given to the Traffic Superintendent *Secy. of State for India v. Dipchand* 24 Cal. 306. (4) or given to the District Traffic Superintendent *E. I. Ry. v. Ramgati Rao* 19 Cal. L. J. 180. (5) or given to the Goods Superintendent *Jankudas v. B. N. Ry. Co.* 16 Cal. W. 356; *Ratha Kissen v. E. I. Ry.* 19 Cal. W. N. 62, or given to Claim Superintendent 20 Cal. W. N. 696; 38 Ind. Cas. 302. is not a good notice under the law. But the Madras High Court has recently held that where a subordinate official sends on the notice to the Agent or informs him of its contents within 6 months, there is a substantial compliance with the requirements of the Act.

There is nothing in the Act which prevents the Ry. Adm. or its Agent or Manager from deputing an officer to receive the notice required by Ss. 77 & 140. Whether a particular officer is authorised by the Agent to receive such notices on his behalf is a question of fact to be determined in each case. Agency may be proved either by direct evidence of authority or by a course of conduct which in the opinion of the court would justify the inference that the subordinate official was authorised by the Agent to receive notices on his behalf *Per Kumaraswami Sastri, Mahadev v. S. I. Ry. Co.* (1922) 42 Mad. L. J. 202.

Claim must be preferred in writing within six months from the date of delivery of goods for carriage—giving of notice, a condition precedent. Under S. 77 of the Indian Railways Act IX of 1890 it is a condition precedent to the bringing of a suit for damages for loss of goods that notice of claim must be given *within 6 months* from the date of delivery of goods for carriage to the railway administration which a plaintiff seeks to render liable. In default of such notice, the plaintiff will not be entitled to a decree against defendant company. *B. B. & C. I. Ry. v. Santilal* 26 All. 207; See also 28 All. 552; 26 Bom. 669; 9 Bom. L. R. 942=31 Bom. 534; 24 Cal. 306, *Ganga Prasad & others v. Agent Beng & N. W. Ry. Co.* Cal. H. Ct. (21-8-95); 35 Cal. 194 and 12 C. W. N. 165. A similar provision is made in S. 10 of the Carriers Act III of 1865. *Dekharia Tea Co. v. The Assam Bengal Ry. Co.* 23 Cal. W. N. 998; *River S. N. Co. Ltd. v. Hazarimal* 41 Ind. Cas. 919.

A Clause on the back of the consignment note requiring claim to be made to the clerk in charge of the station to which the goods have been booked and a written statement of the contents &c. missing, sent to the District Traffic Superintendent does not relieve the plff. from giving a notice as required by S. 77 of the Railway Act. *River S. N. Co. Ltd. v. Hazarimal* 41 Ind. Cas. 919.

Mode of serving notice.—Service of notice is of no avail unless it be communicated to the Agent or the Manager, as the case may be, in the prescribed

mode. Though notices of claim are not to be construed with extreme strictness there must be a substantial compliance with the terms of the act by which they are prescribed. *E. I. Ry. Co. v. Jethmull* 26 Bom. 669 at pp. 686 to 688; *Tilakchand v. E. I. Ry. Co.* 12 Cal. W. N. 165. Notice must be served upon the Agent or Manager of the Railway or upon any officer deputed by the company or its Agent or Manager to receive such notice *Mahadev v. S. I. Ry. Co.* (1922) 45 Mad. 135.

The law does not require that the notice should be physically thrust in the Agent's hand. It is sufficient if it appears from the findings that the Agent has had full knowledge & notice of the claim. *Assam Bengal Ry. v. Meherali* 13 Cal. W. N. 24 expl. and dist). *E. I. Ry. v. Madhohal* 17 Cal. W. N. 1134; 18 Cal. L. J. 147.

Notice of claim given otherwise than in the modes prescribed is not sufficient.—It is not enough that the Agent may have become aware that a claim was made in respect of undelivered goods. A notice in the newspapers of a claim or an oral communication is not sufficient. *E. I. Ry. Co. v. Jethmull* 26 Bom. 669; *G. I. P. Ry. Co. v. Dewsey* 31 Bom. 534; *Tilakchand v. E. I. Ry. Co.* 12 Cal. W. N. 165; *G. I. P. Ry. v. Ganpatrai* 33 All. 544; 8 All. L. J. 543; *Deo Rao v. G. I. P. Ry.* 8 Nag. L. R. 34=13 Lawer 405. The Madras High Court, has however, held that it would be sufficient if the Agent or Manager has somehow knowledge of the claim within the specified time *Mahadev v. South Indian Ry.* (1922) 42 Mad. L. J. 202; 45 Mad. 135. It must be forwarded by registered post, *Martin & Co. Managing agents, Bukhtiarpur Behar Light Ry. v. Fakirchand Sahu* 12 Cal. L. J. 14; 14 Cal. W. N. 888.

Notice to A company is no notice to B company.—(1) Notice of claim for goods lost in transit given to Railway company A with whom they were originally booked is not sufficient notice within Ss. 77 and 140 of the Railway Act to railway company B on whose line the goods were subsequently lost. *Tilakchand v. E. I. Ry. Co.* 12 Cal. W. N. 165.

(2) The plff sued the B. B. & C. I. Ry. and the E. I. Ry. Cos. for damages for non-delivery of goods. On the merits the suit was dismissed as against the B. B. & C. I. Ry., but a decree was passed against the E. I. Ry. Co. It appeared that no notice of plff's claim under S. 140 of the Indian Railways Act IX of 1890, had ever been directly addressed to the E. I. Ry. Co. The plff. relied on a notice addressed to the G. T. M. of the B. B. & C. I. Ry. Co. making a claim against the company. The latter company had at once informed the E. I. Ry. Co. of the plff's claim and had given notice that in case the plff. sued them, they would expect the E. I. Ry. Co. to bear all the expenses. Further correspondence took place between the two companies with reference to plff's claim and the solicitors of the E. I. Ry. Co. wrote to the plff's solicitors acknowledging the receipt of their letter addressed to the G. T. M. of B. B. & C. I. Ry., Bombay. The Lower Court held that in this letter the solicitors of the E. I. Ry. Co. treated the communications sent to them, bthe y

B. B. & C. I. Ry. Co. as communications affecting themselves and the E. I. Ry. Co. could not afterwards say that the notice of claim given by the plff. to the B. B. & C. I. Ry. Co. and forwarded to them (E. I. Ry. Co.) was no notice to them; That the plff. must be held to have given them notice through the B. B. & C. I. Ry. Co. and that such notice was good.

On appeal held (reversing the decree & dismissing the suit) that no sufficient notice had been given to the E. I. Ry. Co. under Ss. 77 & 140 of the Indian Railways Act IX of 1890. *E. I. Ry. Co. v. Jethmall* 26 Bom. 669; *Gangapersai v. The Agent Beng. & N. W. Ry. Co. & Beng. Nagpur Railway.* (Supra).

Whether offer by one Ry. Co. to pay loss for another Ry. Co. amounts to a waiver of notice by that Ry.:—The T. S. of one railway on behalf of another railway offered plff. a certain amount as damages which he refused to accept. There was no proof that the latter company had authorised the former company to make any such offer—Held that such an offer does not amount to a waiver of notice. *G. I. P. Ry. v. Gunpatrai* 8 All. L. J. 513. 33 All 514.

Notice in case of delivery to wrong person:—In the matter of requiring notice to the Railway Co. within a reasonable time in order to enable them to make inquiries and if possible to recover the goods, there is really no reason for making a distinction between cases in which goods have been delivered inadvertently to the wrong person and cases in which they were delivered to a person other than the consignee who claimed to be entitled to them, but did not produce the railway receipt, as he should have done in support of his claim. *Madras & Southern Mahratta Ry. Co. v. Haridas* 35 Mad. L. Journal 35 at p. 39; 41 Mad. 871; see however, *Changanal v. B. & N. W. Ry. Co.* 6 P. R. 1837 (and *Millen v. Brasch & Co.* 10 Q. B. D. 142) where it was held that as wrongful delivery is no loss, no notice is necessary in cases where the goods have been negligently misdelivered to a wrong person.

Plea of notice may be raised at the hearing:—Under this section it is not necessary for the defendant to plead want of notice of action in order to avail himself of it, but he may raise the objection at the hearing. *The Secy of State for India v. Dipchand* 24 Cal 306.

A plea of failure to give notice under this section, urged for the first time in second appeal, and not supported by any evidence that such notice was not given, was held to have been taken too late. *Chhaganlal v. E. I. Ry. Co.* 27 Bom. 597=5. Bom. L. R. 531.

Admission by goods superintendent does not bind the Company:—The company cannot be bound by any admission or statement made by the goods Superintendent as regards a promise to pay the value of the missing articles. He is not the proper person to bind the railway company with such a promise. *Radhakishan v. E. I. Ry. Co.* (1914) 19 Cal. W.N. 62 at p. 64; 21 Ind. Cas. 970.

Offer to settle a claim is not a promise to pay:—An offer to settle a claim at a certain amount could not be treated as a promise to pay the amount, *Mutsaddi Lal v. B. B. & C. I. Ry.* (1920) 18 All. L. J. 377 p. 381; 42 All. 390.

Notice of claim-exclusion of time:—Mr. Rustomji in his commentary on Art 31 of the Limitation Act puts the following query. S. 10, Carriers Act, 1865, as amended in 1899 and S. 77, Railways Act, 1890, provide that a notice of claim or loss &c. must be given within six months from the time when the loss &c. first came to the knowledge of the plff. or from the date of delivery of the goods &c. for carriage by railway respectively; but these Acts do not clearly lay down a rule of limitation for the suit. Clause 2 of Sec. 15 of the Limitation Act provide that in computing the period of limitation prescribed for any suit of which notice has been given, in accordance with the requirements of any enactment for the time being in force, the *period* of such notice shall be excluded. (e. g. by S. 80 of C. P. Code). *Quere* whether by virtue of Sec. 15 (2) Limitation Act, the period of notice can be excluded in computing the period of one year under Arts 30 and 31.

In our opinion there is no scope for this query at all. S. 77 of the Railways Act only requires that the loss should be notified *within six months* &c. If the wording of this section be compared with Sec. 80 of the Civ. P. Codes or S. 167 of the Bom. Dist. Muni. Act III of 1901 or S. 527 of the Bombay City. Muni. Act, III of 1888 or S. 363 of the Bengal Muni. Act III of 1884 or S. 49 of the Punjab Muni. Act III of 1911 or S. 261 of the Madras Muni. Act IV of 1884 and other similar sections it will appear that a suit under the Rys. Act is not prohibited for a particular period. Hence no exemption of any period of notice can be claimed under Sec. 15 (2) of the Limitation Act.

Limitation of suits:—The limitation was reduced from two years to one by Act X of 1899, S. 3 which came into force on the 1st May 1899. A suit may now be brought against a railway company for compensation for loss of goods, non-delivery or delay within one year under the following articles of Act IX of 1908:—

Art 30 of IX of 1908,—Against a carrier for compensation for losing or injuring goods—one year, when the loss or injury occurs.
Madras & S. M. Ry. v. Bhimappa 23 Mad. L. J. 511.

Art 31 of IX of 1908,—Against a carrier for compensation for non-delivery of, or delay in delivering goods—one year, when the goods ought to be delivered.

These articles apply to private carriers as well as to common carriers whether by land or by water. Where the liability of the carrier arises out of a contract respecting the delivery of goods, a suit for compensation against him is governed by Art 115 of the Limitation Act, and that these articles apply where there is no such contract and loss or injury to goods arises from a tort e. g. want of proper care or negligence &c. on the part of the carrier. Art 31 applies to a suit against a carrier for compensation for non-delivery of goods and Art 115 applies to

compensation for breaches of contract not in writing registered and not specially provided for in the Act. *Haji Ajam v. Bom. Persia S. N. Co.* 26 Bom. 562=4 Bom. L. R. 417; *G. I. P. Ry. Co. v. Rai Sett* 19 Bom. 165; *Dannell v. B. I. S. N. Co.* 12 Cal. 477; *Hassaji v. E. I. Ry. Co.* 5 Mad. 388. *G. I. P. Ry. v. Ganpatrai* 33 All. 514. Also Art 115 applies when the goods are not alleged to be lost but are found to have gone astray. *Surendra Lal v. Secy of State* (1917) 25 Cal. L. J. 37. See also pp. 286-287.

(a) **Non-delivery is no proof of loss:**—Mere non-delivery of goods is no proof of loss. The mere fact of its non-delivery on a certain date would not give rise to a presumption that the loss occurred on that date. To have the benefit of Art 30 of Act IX of 1908, (Art 30 of Act XV of 1877) the carrier has to prove the actual date of the loss. *Mohansing v. Conder* 7 Bom. 478; *Dannell v. B. I. S. N. Co.* 12 Cal. 477. In *Motiram v. E. I. Ry. Co.* 103 P. R. 1906, it was held that the Art 31 of the Limitation Act IX of 1908 governs suits against a railway company for compensation for non-delivery of goods whether the failure to deliver was tortious or was due to a breach of contract. *G. I. P. Ry. v. Rai Sett* 19 Bom. 165; *Hajee Ajam v. B. P. S. N. Co.* 26 Bom. 562; *G. I. P. Ry. v. Ganpatrai* 33 All. 541. See remarks at pp. 286-287.

(b) **Limitation-injury to passengers:**—Art. 30 does not apply to suits against a carrier for compensation for injury to passengers carried by him. If the death of passenger is caused by an actionable wrong of the carrier, the suit of the legal representative for compensation would be governed by Art 21. Such a liability would be looked upon as arising from a misfeasance rather than from a non-feasance. *Foulkes v. Metropolitan &c. Co.* 7 C. P. D. 157; *E. I. Ry. Co. v. Kalidas* 28 Cal. 401.

(c) **Recovery of overcharges—Limitation.**

Art 62;—For money payable by the defendant to the plaintiff for money received by defendant for the plaintiff's use—three years from the time when the money is received.

Customers of railway companies can recover overcharges by an action for money had and received. It has been held in several cases that money which a party has been wrongfully compelled to pay under circumstances in which he was unable to resist the imposition, may be recovered back in an action for money had and received; because the payments made by the plaintiff were not voluntary, but were made in order to induce the company to do that which they were bound to do without them. *Parker v. G. W. Ry. Co.* 11 C. B. 545; *Edwards v. G. W. Ry. Co.* 11 C. B. 588; *The Lancashire Rail Co. v. Gidlow* L. R. 7 H. L. 517.

Not a valid acknowledgement under S. 19 of the Limitation Act:—

A letter by a railway company containing the words "In regard to your claim for compensation I regret the railway is in no way responsible in this case" is not an acknowledgement of a claim for value of non-delivered goods against a rail-

way company so as to save limitation. *Motiram v. E. I. Ry.* 108 P. R. 1906 (19 Bom. 165 and 26 Bom. 562;—*Contra*—3 Mad. 107 & 204 and 12 Cal. 477).

78. Notwithstanding anything in the foregoing provisions of this chapter, a railway administration shall not be responsible for the loss, destruction or deterioration of any goods with respect to the description of which an account materially false has been delivered under sub-section (1) of section 58 if the loss, destruction or deterioration is in any way brought about by the false account, nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.

See notes to Sections 51, 72 and 75.

Mis-description of goods—Fraud:—(1) It is the duty of every person sending goods by a carrier to make use of no fraud or artifice to deceive him whereby his risk is increased, or his care and diligence may be lessened. Angell on Carriers 5th Edition page 252; See also *Edward v. Sherrat* 1 East 604; *Batson v. Donovan* 4 B. and A. 21.

If the consignor fraudulently conceals the value and risk from the carrier, in order to be charged at a lower rate for carriage, he cannot recover more than the amount of the declared value. If he declares the value of the goods, he is bound by the declaration, and cannot afterwards show that the value of the goods exceeded that declared.—*Ma. Cance v. L. & N. W. Ry. Co.* 31 L. J. Ex. 65; 34 L. J. Ex. 39; See also *Kenrig v. Eggleston* Ayley 93; *Walker v. Jackson* 10 M. & W. 161; *Gibbon v. Paynton* 4 Burr. 2299; *Nevin v. G. S. & W. Ry. Co.* 30 L. R. Ir. 125.

(2). The plaintiff consigned to the defendants for carriage from B to U certain goods among which were 12 bags of *sugarcandy*. At the time of signing the consignment note the plaintiff's agent erroneously, but without fraudulent intent stated the contents of the 12 bags to be *alum* for which a lower freight was charged by the defendants. On the railway receipt given by the clerk the following condition was printed. "The company gives notice that they are not responsible for loss or damage arising from fire, the Act of God, or civil commotion." In the course of the journey, the plaintiff's goods including 10 bags of *sugarcandy* were destroyed by fire. In an action for non-delivery:—Held, (1) under the provision of S. 9 of the Carrier's Act 111 of 1865, the burden of proving negligence on the part of the defendants was not upon the plaintiff, notwithstanding the condition in the receipt; (2) The misdescription by the plaintiff's agent of the 12 bags of *sugarcandy* as *alum* did not exonerate the defendants from all liability to the plaintiff. The plaintiff, however was entitled to recover the value of 10 bags of *alum* only and not *sugarcandy* while the defendants on the other hand could not charge freight as for *sugarcandy* in respect of the said 12 bags. *Iswardas Gulabchand v. G. I. P. Ry. Co.* 3 Bom. 120.

(3) Misdescription of the nature of goods entrusted to a common carrier, disentitles the sender to recover for their loss although the goods would not be subject to any extra rates, had they been properly described. *Rohismallah v. Palmer Cor.* 133.

Loss destruction &c:—If any fraud be practised on the carrier, as if the real value of the goods be deceitfully misrepresented to or intentionally concealed from him, whereby he is induced to take them of trifling value, he is not liable if they be lost or stolen from him. *Bralley v. Waterhouse* 3 Car. & P. 318. *Clay v. Willan* 1 H. B. 298. See also notes to Ss. 72 & 75 pp. 217 & 301.

Meaning of injury:—Deterioration of cattle from want of food and water is an *injury* within the meaning of the Act. *Allday v. G. W. Ry. Co.* 34 L. J. Q. B. 5.

79. Where an officer, soldier or follower, while being or travelling as such on duty upon a railway belonging to, and worked by the Government, loses his life or receives any personal injury in such circumstances that, if he were not an officer, soldier or follower being or travelling as such on duty upon the railway, compensation would be payable under Act No. XIII of 1855 or to him, as the case may be, the form and amount of the compensation to be made in respect of the loss of his life or his injury shall, where there is any provision in this behalf in the military regulations to which he was immediately before his death, or is, subject, be determined in accordance with those regulations and not otherwise.

Act XIII of 1855:—Act XIII of 1855 is intended to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong. This Act with certain verbal alterations is wholly copied from English Statute 9 & 10 Victoria Chapter 93 Known as Lord Campbell's Act & often referred to as the Fatal Accident Act, 1846. The only material difference in the English Statute and our Act is that in sec. 2 in the English Statute the damages are to be proportioned to the injury resulting from death, whereas in our Act the damages are to be proportioned to the loss resulting from death; English cases therefore afford valuable assistance in considering under what circumstances a debt in an action under this Act would be guilty of negligence and be held liable to pay damages for the loss of a life consequent on that negligence. Our Act (13 of 1855) requires that the death of a person for whose loss, damages are sought to be recovered must be caused by the wrongful act, neglect, or default of the party sought to be made liable. *Perin v. G. I. P. Ry.* (Sep. 1908) Bom. High Court.

Measure of damages:—Measure of damages to be given (under Act 13 of 1855) to the family of a person whose death has been wrongfully caused is discussed in *Ratanbai v. G. I. P. Ry. Co.* 8 Bom. H. C. R. 150; *Vinayak v. G. I. P.*

Ry. 7 Bom. H. C. R. 113. These decisions lay down clearly that in assessing damages the pecuniary loss sustained by the family of the deceased is all that can be considered & that nothing can be allowed to the survivors as compensation for mental suffering etc. *Blake v. Mid. Ry. Co.* 18 Q. B. 93; 21 L. J. Q. B. 233. *Rowley v. London & N. W. Ry. Co.* 42 L. J. Ex. 153.

Representative:—The word "*representative*" in Act XIII of 1855 does not mean only executors and administrators, but includes all or any one of the persons for whose benefit suit may be brought under the Act and it makes no difference whether the deceased was a European or Eurasian. *Johnson & Anr. v. Mad. Ry. Co.* 28 Mad. 479.

Whether adopted son is a legal representative of the deceased—Whether entitled to maintain suit:—A son adopted by the widow of a deceased Hindu (in respect of whose estate no Probate, Letters of Administration, or Certificate of Heirship has been granted) is the legal representative of the deceased, and as such is entitled to maintain a suit under Act XIII of 1855, for the benefit of the persons, if any, entitled to compensation for the injury occasioned to them by the death of the deceased against those whose negligence caused that death. *Vinayak v. G. I. P. Ry. Co.* 7 Bom. H. Ct. R. 113.

Whether adopted son is entitled to damages:—An adopted son is not entitled to have any portion of the damages awarded in the suit allotted to him as a child of the deceased. *Vinayak v. G. I. P. Ry.* (Ibid).

Child:—The word "*child*" is, in the English Statute 9 and 10 Vict. c. 93 defined in the same way as in Act XIII of 1855 and has been held to mean a legitimate child.

Accordingly where the mother of a woman who was killed brought, as administratrix, an action on behalf of herself and her deceased daughter's *illegitimate child*, damages were given to the plaintiff on her own account only and none for the *illegitimate child*. *Dickinson v. N. E. Ry. Co.* 33 L. J. Ex. 91; but they may be given on behalf of a child *en ventre sa mere* at the time of the death and subsequently born. *George v. Richard* 3 A. & E. 466.

The right of the beneficiary is a distinct and several right:—The right of the beneficiaries, under Act XIII of 1855 is not a joint right, but a distinct and several right in respect of the same cause of action enforceable at the suit of all or one of them suing for himself and the rest (*Pym v. G. N. Ry. Co.* 4 B. & S. 396). The beneficiaries are in the position of joint decree-holders. (The principle in *Peria Sami v. Krishna* 25 Mad. 431 followed). *Johnson & Anr. v. Mad. Ry. Co.* 28 Mad. 479.

Damages for consolation or mourning cannot be given:—Damages can only be given for actual pecuniary injury and not for consolation, *Blake v. Midland Ry. Co.* 18 Q. B. 93; nor can they be given for funeral expenses or mourning. *Dalton v. S. E. Ry. Co.* 27 L. J. C. P. 227.

Onus of no negligence lies on the company:—It has been held that in a suit brought by the legal representative of a deceased person who was killed in an accident while travelling in the train, the onus of proving that there was no negligence on the part of the railway company lies upon them on the principle of law enunciated in sec. 106 of the Indian Evidence Act (*G. W. Ry. Co. of Canada v. Braid* 1 Moore's P. C. Cases new series p. 101 referred to) *Madras Ry. Co. v. Ratilal* 4 Mad. L. T. 251.

Limitation:—A suit for compensation for death under Fatal Accidents Act XIII of 1855 or for any other injury to the person is governed by Arts 21 and 22 of the Limitation Act and not by a more general Article 36. Such a suit therefore should be brought within one year from the date of the death or when the injury is committed.

80. Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred.

Suit for compensation for injury to through-booked traffic:—This section gives the consignor an option (1) of suing the company with which the contract is made; (2) or the company on whose railway the loss, destruction or deterioration occurred; and that any agreement to the contrary, restricting the liability of the former to losses &c. occurring on its own line only, shall be void and of no effect; but it would seem that a company is at liberty to make any contract with regard to the goods after they have once been handed over to another company, and such a contract cannot be held to be void on the ground of being unjust and unreasonable. *Aldridge v. G. W. Ry. Co.* 15 C. B. (N. S.) 582; *Zuns v. S. E. Ry. Co.* L. R. 4 Q. B. 539. *Fowles v. Gt. W. Ry. Co.* 22 L. J. Ex. 76; *Kent v. Midland Ry. Co.* L. R. 10 Q. B. 1; 44 L. J. Q. B. 18; *Mahony v. Waterford & Ry. Co.* (1900) 2 Ir. R. 273.

A railway company receiving from another company goods consigned under a through booking are not liable for injury to such goods unless the injury is done while the goods are in their charge, or unless the company to whom the

goods were first delivered are agents for the company which subsequently receives such goods. *Tuohy v. G. S. & W. Ry. Co.* (1898) 2 Ir. R. 789.

Principal office of the company:—A railway company carries on its business only at the principal station where the general superintendence of the whole concern is centered and not at any station however large where the local management of any portions of the line is conducted subject to the supervision of the general management at the principal station. *Brown v. L. & N. W. Ry. Co.* 32 L. J. Q. B. 318; *Rodgers v. L. S. & P. Ry.* 26 W. R. 192.

Through booking of passengers and goods—liability of:—Railway companies may enter into such arrangements with one another, as to become agents for one another and responsible for each other's acts, so that a contract to carry and deliver goods made with one company may render the other liable for a breach occurring on the line of the latter. *Gill v. Manchester Ry. Co.* 42 L. J. Q. B. 89; *G. I. P. Ry. v. Radhakisan* 5 Bom. 371. If a carrier contracts to convey to and deliver goods at a particular place, his duty at that place is precisely the same whether his own conveyance goes the entire way or stops short at an intermediate place, and the goods are conveyed further on by another carrier; and this carrier or his clerk at the place of destination is the agent of the original carrier for all purposes, connected with the conveyance and delivery and dealing with the goods to the same extent as his own clerk would have been at the place where his own conveyance stops with regard to goods to be there delivered. *Crouch v. G. W. Ry. Co.* 26 L. J. Ex. 418; *Machu v. L. & S. W. Ry. Co.* 2 Ex. 415.

(2) Where goods are received by a railway company to be carried to a particular destination, the company receiving the goods is the party to be sued for the loss of or damage to them, although the loss or damage has been sustained on the line of a second or third railway company to whom they have been delivered by the first railway company to be carried to their place of destination. The contract is made with the first railway company to whom they have been delivered and to whom the hire for the entire journey has been paid. *Coxon v. G. W. Ry.* 29 L. J. Ex. 165; *B. & E. Ry. Co. v. Collins* 7 H. L. cases 194; 29 L. J. Ex. 41; *Beng N. Ry. v. Haji Mutsadi* 7 All. L. J. 833, but both companies may under certain circumstances become joint contractors for the conveyance of the goods. *Hayes v. S. W. Ry. Co.* 9 Ir. C. L. R. 474. The above rule is also applicable in cases of passengers and their luggage. *Taylor v. G. N. Ry. Co.* L. R. I. C. P. 385.

(3) That the contract not having been made with the B. B. & C. I. Ry. and the goods not having been shewn to have been lost on their line, they could not be held liable under S. 80 of I. Railways Act unless it was proved that the E. I. Ry. acted either as their partners or their agents in issuing the tickets. *Jethmul v. B. B. & C. I. Ry. and E. I. Ry.* 3 Bom. L. R. 260; *Kali Ram v. Mad. Ry. Co.* 3 Mad. 240; *G. I. P. Ry. v. Sham Manohar* 9 All. L. J. 492 = 34 All. 422. where it was held that where goods are booked for conveyance over more than one railway system the owner can only claim compensation for loss against a railway company

other than the company with which they were booked if it is shown that the loss occurred on the system of the company sued. See. Also *E. I. Ry. Co. v. Hopchand* 19 Cal. L. J. 434. *Contra—G. I. P. Ry. v. Rallhakissen* 5 Bom. 371. *Narangrai v. R. S. Navigation Co.* 11 Cal. W. N. 1071; *Gocul Chander Das v. India G. S. N. & Ry. Co.* 11. Cal. W. N. 1076; *B. B. & C. I. Ry. v. Santi Lal* 26 All. 207.

(4) In cases where through booking, first by steamer and then by rail or vice versa, is made for the convenience of the public and when the journey is performed partly in steamers of one company and partly in trains of the other and charges creditable to each are subsequently adjusted, it seems as reasonable to treat the company which receives the goods as the agents of the other company, as to treat the other company as its agents. *Narang Rai v. R. S. Navigation Co.* (Ibid.), *Goculchander Das v. India G. S. N. & Ry. Co.* (Ibid).

(5) When a railway company receives and undertakes to carry goods from a station on its railway to a place on another distinct railway with which it communicates, this is evidence of a contract with the receiving company for the whole distance and the other railway company be regarded as their agents and not as contracting with the bailor, *Chunital v. Nizam G. S. Ry. Co.* 29 All. 228, p. 231; 4 A. L. J. 80. *Muschamp v. Lancaster & Preston Junction Ry. Co.* 8 M. & W. 421; *Webber v. G. W. Ry. Co.* 3 H. & C. 771. A receipt given by a railway company for goods to be sent to a place on another railway and there to be delivered for one entire sum is one entire contract for the whole distance and constitutes an entire contract with the railway which gave the receipt note. *Chunital v. The Nizam G. S. Ry. Co.* 29 All. 228 at p. 231.

*Contra:—*Where two railway companies interchange traffic, goods, and passengers with through tickets, rates, and invoices, payments being made at either end and profits shared by mileage, the receiving company by granting a receipt note for goods to be carried over and delivered at a station of the delivering company's line, does not thereby contract with the consignor of the goods as agent of the delivering company. *Kaliram v. Mad. Ry. Co.* 3 Mad. 240.

Jurisdiction:—A railway company is a person carrying on business within the meaning of section 12 of the Letters Patent and it may be sued at the place of its principal office where the Directors meet and the general business of the company is transacted or the brain power of the business is (*Erickson v. Last* L. R. 8 Q. B. D. 414).

A Court has no jurisdiction to entertain a suit brought against the Secretary of State where the cause of action has arisen wholly outside the ordinary original civil jurisdiction of that Court on the sole ground that the Secretary of State dwelt or carried on business or personally worked for gain within the local limits of the said court at the time of the institution of that suit.

Government may be presumed to dwell in its own capital and a Government engaged in trades though it may be for purposes of the State carry on business there. *B. E. M. Rodericks v. The Secretary of State* 16 Cal. W. N. 747 = 40 Cal. 308.

(2) Under S. 80 of the Indian Railways Act, 1890, when goods are booked through over the lines of two or more railway administrations and are lost or damaged in transit, it is at the option of the person damaged to sue either the railway administration to which the goods were delivered by the consignor or the railway administration on whose line the loss occurred. *B. B. & C. Ry. v. Santi Lal* 26 All. 207; *Makhan Lal & others v. B. B. & C. I. Ry.* 12 All. L. J. 339; 25 Ind. Cas. 77.

S. 80 contemplates that where the goods are booked at a Ry. Station of one company and they pass through Rys. of other companies, an option is given to the consignor to file a suit against any of the companies and not against that company only which gave him the railway receipt. *Central India Spinning & W. Co. v. G. I. P. Ry.* (1922) 24 Bom. L. R. 272 p. 276.

(3) Plaintiff contracted at Cawnpore with the E. I. Ry. Co. to deliver goods in Madras. The E. I. Ry. Co. does not run into the jurisdiction of the Madras High Court. The railway company made default in delivery of the goods and the plaintiff therefore sued them for damages for breach of contract in the Madras High Court. No leave to sue (under S. 12 of the Letters Patent) was obtained. The Court of First Instance dismissed the suit for want of Jurisdiction.—Held, on appeal, following *Gopi Krishna v. Nil Komul Banerjee* 13 B. L. R. 461 and *Vaughan v. Weldon* L. R. 10 C. P. 47 that the breach of contract having taken place at Madras, the cause of action had wholly arisen within the Jurisdiction of the High Court. *Mahomed Abdul Kadar v. E. I. Ry. Co.* 1 Mad. 375; *E. I. Ry. Co. v. Bengal Coal Company* 1 Cal. 950; *Salugram v. Chahamal* 34 All. 49.

An action against a Ry. Co. for damages on account of the death of a passenger alleged to have been caused by the negligence of the Company's servants is not an action *Ex contractu* but an action based on tort and on the provisions of the Indian Fatal Accidents Act (1855), such an action therefore cannot be brought at the place where the deceased person's ticket was taken.

There is no general obligation upon a Railway Co. to carry passengers who have taken tickets "Safely". *Shiam Narain v. B. B. & C. I. Ry.* 41 All. 488; (*E. I. Ry. v. Kalidas* 28 Cal. 401; referred).

(4) The plaintiff brought two suits against the defendant for damages, on account of the loss sustained by him in consequence of detention of his goods by the latter and fall in market price of those goods during such detention and for recovery of sums unlawfully recovered from him by defendant in respect of surcharge and demurrage. The lines of various railway companies were used and the goods conveyed to Goalundo by Eastern B. S. Railway and thence to Bairab by Boat by the defendant Co., whose Head Office is in Calcutta:—Held that having regard to the definition of Railway in Section 3 (4) d of the Railway Act and of Railway Administration in Section 3 (5) the defendant Co., was a railway administra-

other than the company with which they were booked if it is shown that the loss occurred on the system of the company sued. See Also *E. I. Ry. Co. v. Hugeland* 19 Cal. L. J. 434. Contra—*G. I. P. Ry. v. Radhakissen* 5 Bom. 371. *Narangra v. R. S. Navigation Co.* 11 Cal. W. N. 1071; *Gopal Chander Das v. India G. S. N. & Ry. Co.* 11. Cal. W. N. 1076; *B. B. & C. I. Ry. v. Santi Lal* 26 All. 207.

(4) In cases where through booking, first by steamer and then by rail or vice versa, is made for the convenience of the public and when the journey is performed partly in steamers of one company and partly in trains of the other and charges creditable to each are subsequently adjusted, it seems as reasonable to treat the company which receives the goods as the agents of the other company, as to treat the other company as its agents. *Narsing Rai v. R. S. Navigation Co.* (Ibid); *Gopalchander Das v. India G. S. N. & Ry. Co.* (Ibid).

(5) When a railway company receives and undertakes to carry goods from a station on its railway to a place on another distinct railway with which it communicates, this is evidence of a contract with the receiving company for the whole distance and the other railway company be regarded as their agents and not as contracting with the bailor. *Chamulal v. Nizam G. S. Ry. Co.* 29 All. 223. p. 231; 4 A. L. J. 80. *Muschamp v. Lancaster & Preston Junction Ry. Co.* 8 M. & W. 421; *Webber v. G. W. Ry. Co.* 3 H. & C. 771. A receipt given by a railway company for goods to be sent to a place on another railway and there to be delivered for one entire sum is one entire contract for the whole distance and constitutes an entire contract with the railway which gave the receipt note. *Chamulal v. The Nizam G. S. Ry. Co.* 29 All. 223 at p. 231.

Contra:—Where two railway companies interchange traffic, goods, and passengers with through tickets, rates, and invoices, payments being made at either end and profits shared by mileage, the receiving company by granting a receipt note for goods to be carried over and delivered at a station of the delivering company's line, does not thereby contract with the consignor of the goods as agent of the delivering company. *Kaliram v. M. S. Ry. Co.* 3 Mad. 240.

Jurisdiction:—A railway company is a person carrying on business within the meaning of section 12 of the Letters Patent and it may be sued at the place of its principal office where the Directors meet and the general business of the company is transacted or the brain power of the business is (*Erickson v. Laid* L. R. 3 Q. B. D. 414).

A Court has no jurisdiction to entertain a suit brought against the Secretary of State where the cause of action has arisen wholly outside the ordinary original civil jurisdiction of that Court on the sole ground that the Secretary of State dwelt or carried on business or personally worked for gain within the local limits of the said court at the time of the institution of that suit.

Government may be presumed to dwell in its own capital and a Government engaged in trades though it may be for purposes of the State carry on business there. *B. E. M. Rodericks v. The Secretary of State* 16 Cal. W. N. 747 = 40 Cal. 303.

(2) Under S. 80 of the Indian Railways Act, 1890, when goods are booked through over the lines of two or more railway administrations and are lost or damaged in transit, it is at the option of the person damaged to sue either the railway administration to which the goods were delivered by the consignor or the railway administration on whose line the loss occurred, *B. B. & C. Ry. v. Santi Lal* 26 All. 207; *Makhan Lal & others v. B. B. & C. I. Ry.* 12 All. L. J. 339; 25 Ind. Cas. 77.

S. 80. contemplates that where the goods are booked at a Ry. Station of one company and they pass through Rys. of other companies, an option is given to the consignor to file a suit against any of the companies and not against that company only which gave him the railway receipt. *Central India Spinning & IV. Co. v. G. I. P. Ry.* (1922) 24 Bom. L. R. 272 p. 276.

(3) Plaintiff contracted at Cawnpore with the E. I. Ry. Co. to deliver goods in Madras. The E. I. Ry. Co. does not run into the jurisdiction of the Madras High Court. The railway company made default in delivery of the goods and the plaintiff therefore sued them for damages for breach of contract in the Madras High Court. No leave to sue (under S. 12 of the Letters Patent) was obtained. The Court of First Instance dismissed the suit for want of Jurisdiction.—Held, on appeal, following *Gopi Krishna v. Nil Komul Banerjee* 13 B. L. R. 461 and *Vaughan v. Weldon* L. R. 10 C. P. 47 that the breach of contract having taken place at Madras, the cause of action had wholly arisen within the Jurisdiction of the High Court. *Mahomed Abdul Kadar v. E. I. Ry. Co.* 1 Mad. 375; *E. I. Ry. Co. v. Bengal Coal Company* 1 Cal. 950; *Salingram v. Chahamal* 34 All. 49.

An action against a Ry. Co. for damages on account of the death of a passenger alleged to have been caused by the negligence of the Company's servants is not an action *Ex contractu* but an action based on tort and on the provisions of the Indian Fatal Accidents Act (1855), such an action therefore cannot be brought at the place where the deceased person's ticket was taken.

There is no general obligation upon a Railway Co. to carry passengers who have taken tickets "Safely". *Shiam Narain v. B. B. & C. I. Ry.* 41 All. 488; (*E. I. Ry. v. Kalidas* 28 Cal. 401; referred).

(4) The plaintiff brought two suits against the defendant for damages, on account of the loss sustained by him in consequence of detention of his goods by the latter and fall in market price of those goods during such detention and for recovery of sums unlawfully recovered from him by defendant in respect of surcharge and demurrage. The lines of various railway companies were used and the goods conveyed to Goalundo by Eastern B. S. Railway and thence to Bairab by Boat by the defendant Co., whose Head Office is in Calcutta.—Held that having regard to the definition of Railway in Section 3 (4) of the Railway Act and of Railway Administration in Section 3 (5) the defendant Co., was a railway administra

tion on whose railway the loss complained of occurred within the meaning of S. 80 and the plaintiff under that section has the option of suing either the N. W. Ry. or the deft. Co. *Ind. Gen. Nav. & Ry. Co. v. Harcharandas* 47 p. R. (1912) 378; 233 P. L. R. 1912; 15 Ind. Cas. 12.

See also Ss. 19 and 20 Cl. (c) of the Code of Civil Procedure as to place of cause of action.

Loss:—The word "loss" in Chap. VII of the Railways Act includes loss to the owner of goods made over to a Railway Administration which have been misdelivered and so have been *lost to the person entitled thereto*.

The case of *wrongful detention* which causes *loss* to the owner of the goods bailed would also come within the sections of the said Chapter VII. The temporary loss of an article is also included in the word *loss* in this chapter. *Hill Sawyer & Co. v. Secy. of State* (1921) 61 Ind. Cases. 926; 2 Lahore 133 *M. & S. M. Ry. Co. v. Haridas* 41 Mad. 871 = 49 Ind. Cases. 69. (*Chungamal v. B. N. W. Ry.* 6 P. R. 1897 overruled). It covers also a loss by fall in market price. *Ind. G. N. & Ry. Co. v. Harcharandas* 47 P. R. (1912) 378.

Damages, whether can be recovered from both railways:—Although sec. 80 of the Rys. Act gives a plff. an option to sue one of two Ry. Adms. in cases where goods have been booked through, yet where the plff. sues both of them, he is not entitled to a decree against that one of them which has satisfied the court that it has taken all the care of his goods that was required of it by law. *Secy. of State for India for O. & R. Railway & G. I. P. Ry. v. Afzal Husain* (1920) 56 Ind. Cas. 714; *G. I. P. Ry. v. Kanayatal* 14 N. L. R. 122; 48 Ind. Cas. 294. *Kokamal v. G. I. P. Ry.* 11 A. L. J. 775n; 21 Ind. Cas. 428. A contrary view, however, has been held to the effect that the railway administration on whose line the loss occurred is equally liable with the railway administration to which the goods were delivered by the consignor. *Hill Sawyer & Co. v. Secy. of State* (1921) 2 Lahore 133; 61 Ind. Cas. 526; *B. N. Ry. Co. v. Haji Mutsadi* 7 All. L. J. 833; 7 Ind. Cas. 100; but if it is not known on which railway the loss occurred, the liability must fall on the consigning railway. *Agent Rohilkhund & Kumaon Ry. v. Sieth Gulabchand* 30 K. L. R. 28.

Carriage of goods wholly by Sea:—The provision of the Railway and Canal Traffic Act applies to the carriage of goods by a railway company by sea even where no part of the carriage was by land. *Jenkins v. Great Central Ry. Co.* (1911) W. N. 216.

81. [*Limitation of liability of railway administration in respect of traffic on inland waters by vessel not being part of railway,*] *Rep. by the Indian Railways Act (1890) Amendment Act, 1896 (IX of 1896), section 5.*

This section was repealed by S. 5 of Act IX of 1896 from 5th March 1896.

82. (1) When a railway administration contracts to carry passengers, animals or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea from the act of God, the King's enemies, fire, accidents from machinery, boilers and steam and all and every other dangers and accidents of the seas, rivers and navigation of whatever nature and kind soever shall, without being expressed, be deemed to be part of the contract, and, subject to that condition, the railway administration shall, irrespective of the nationality or ownership of the ship used for the carriage by sea, be responsible for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea, to the extent to which it would be responsible under the Merchant Shipping Act, 1854, and the Merchant Shipping Act Amendment Act, 1862, if the ship were registered under the former of those Acts and the railway administration were owner of the ship, and not to any greater extent.

(2). The burden of proving that any such loss, injury or damage as is mentioned in sub-section (1) happened during the carriage by sea shall lie on the railway administration.

Sub-Section 1 is adapted from The Regulation of Railways Act, 1863, (31 & 32 Vict. C. 119) S. 14 which runs as hereunder. "Where a railway company by, through booking contract to carry any goods from place to place, partly by railway and partly by sea, a *condition exempting* the company from any loss or damage which may arise during the carriage of such goods by sea from the Act of God, the King's Enemies, fire, accidents from machinery, boilers and steam, and all and every other dangers and accidents of the seas rivers and navigation of whatever nature and kind soever, shall if published in a conspicuous manner in the office where such through booking is effected, and if printed in a legible manner on the receipt or freight note which the company gives for such goods, be valid as part of the contract between the consignor of such goods and the company in the same manner as if the company had signed and delivered to the consignor a bill of lading containing such conditions."

Contract when divisible:—Where the carrier contracts to carry partly by land and partly by water the contract is divisible. *Le Conteur v. L. & S. Ry. Co.* 35 L. J. Q. B. 40.

Act of God:—Accident produced by any physical cause which is irresistible such as a loss by lightning or storms, by the perils of the sea, by an inundation or earthquake, or by sudden death or illness, is the act of God (Story on Bailm, 9th Ed. p. 28); *Sanders v. Coleman* 5 Virg. L. R. 675.

The term "*Act of God*" means something in opposition to the act of man such as storms, lightning, tempests and inevitable accidents not resulting from human agency. If the danger or accident, though unavoidable, has been occasioned by the act of man, the carrier cannot put that forward as an excuse for the non-delivery of goods. If the goods have been destroyed or swept away by rains and floods, the circumstances attendant upon the loss must be regarded, in order to determine whether it has been caused by the Act of God or man. If he has neglected to provide proper covering for the goods or if he has gone out of his way to meet the danger or if he has travelled by unusual roads or crossed a plain subject to inundations when he might have kept the high ground and been safe, the loss occasioned thereby is a loss from the act or negligence of man and the common carrier is consequently responsible therefor. *Nugent v. Smith* 1 C. P. D. 423, 436.

The Act of God which can excuse a carrier must be a direct and violent act of nature. The words designate the immediate operation of purely natural agents such as lightning, earthquake and tempest exclusive altogether of human intervention and not so extensive as to comprehend what is merely inevitable (Mac-lachlan on shipping 2nd Edn, 499).

Thus the Act of God is no defence except in cases where the defendant can show that the damage would equally have happened if he had done his duty (*Withers v. North Kent Ry.* 27 L. J. Ex. 417), and care must be taken to see whether the accident is due to an Act of God or to a contemporaneous act of the defendant. If a storm or a very heavy rain though unusual, is not unprecedented, it does not come within the category of Acts of God. (*Dixon v. Met. Board of Works* 7 Q. B. D. 418).

To be regarded in law, as an Act of God the occurrence must be overwhelming and not only unforeseen but incapable of being foreseen and absolutely incapable of being prevented or guarded against. *Vithaldas v. The Municipal Commissioners of Bombay* 4 Bom. L. R. 914; *Gaekwar v. Katchara* 5 Bom. L. R. 403; *Moholal Maganlal v. Bai Jivkar* 6 Bom. L. R. 529 (distg. in *Pannuja v. Krishnaswami* 31 Mad. 169); *Municipal Corporation of Bombay v. Vasudev* 6 Bom. L. R. 899; *Municipality of Hulli v. Ralli Bros.* 13 Bom. L. R. 1138 = 35 Bom. 492.

If the defendant can show that he has provided for every probable contingency, he is not liable further, but may excuse himself for not providing for something which is contrary to all previous experience. *Fletcher v. Smith* 2 App. Cas. 781 (vide Smith's Law of Negligence p. 18). A fall of rain, of a kind which would not reasonably have been anticipated, amounts to *Vis Major*, *Nichols v. Marstrand* L. R. 10 Ex. 298, 46 L. J. Ex. 174; a frost of extraordinary severity

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It is the carrier's duty to do what he can, by reasonable skill and care, to avoid all perils, including the excepted perils. If, notwithstanding such skill and care, damage does occur, he is relieved from liability; but if his negligence has brought about the peril, the damage is attributable to his breach of duty, and the exception does not aid him. *Gill v. Man, Sheff & Co. Ry. Co.* 42 L. J. Q. B. 89.

Carriers by sea for hire, are common carriers:—Carriers by sea for hire, are common carriers by the common law of England and where the contract is made in Calcutta, whatever be the nationality of the carriers they will be governed by the *lex loci contractus* which is the common law of England. *Mackilloan v. The Compaigne de Messageries Maritimes de France* 6 Cal. 227 not followed). 28 Mad. 400; They are not governed by the carriers Act III of 1865. *Kariadan Kumber v. B. I. S. N. Co.* 38 Mad. 941.

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(c) If damage done to goods be due to sea-water the ship-owner will be held liable, even though it be due to the passing of the water through the holes bored by the crews through the sides of the ship in order to settle her. *The Chasta* L. R. 4. A. & E. 446.

(d) If the goods are not delivered to the owner owing to the foundering of a vessel caused by collision and if that collision has happened without any fault on the part of the carrying ship, the ship-owner would not be held liable for such damage. *Wilson v. Owners of Xantho* L. R. 12 App. Cas. 503.

Exception of loss by negligence of master or crew is void:—The provisions of Railway and Canal Traffic Act 1854, which are extended to traffic carried by the railway company on steam vessels apply to the case of carriage wholly by sea as well as by land and therefore where goods are delivered to a railway company, whose special Act incorporates the Railway Clauses Act 1863, to be carried by them, between two sea ports only, a condition in the bill of lading that the company shall not be liable for loss caused by the negligence of the master or mariners in navigating the ship is void as being unreasonable. *Riggall v. Great Central Ry. Co.* (1909) 14 Com. Cas. 259 followed. *Jenkins v. Great Central Ry. Co.* (1912) 1 K. B. 1; 106 L. T. 505.

Liability of carriers by sea:—A carrier by sea cannot, under the Indian Law, contract out of liability for the negligence of himself or of his servants. S. 151 of the Contract Act lays down an irreducible minimum of liability for common carriers as well as for other bailees. *Allibhai v. British India Steam Navigation Co.* (1919) 52 Ind. Cas. 296; 12 B. L. T. 178; see however, *Dekhni Tea Co. v. Assam Bengal Ry.* 47 Cal. 6.

CHAPTER VIII.

ACCIDENTS.

Report of Railway
Accidents.

83. When any of the following accidents occur in the course of working a railway, namely:—

- (a). Any accident attended with loss of human life, or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property;
- (b). any collision between trains of which one is a train carrying passengers;
- (c). the derailment of any train carrying passengers or of any part of such a train;
- (d). any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property;

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- (e). any accident of any other description which the Governor General in Council may notify in this behalf in the Gazette of India.

The railway administration working the railway and, if the accident happens to a train belonging to any other railway administration, the other railway administration also shall, without unnecessary delay, send notice of the accident to the Local Government and to the Inspector appointed for the railway; and the station-master nearest to the place at which the accident occurred or, where there is no station-master, the railway servant in charge of the section of the railway on which the accident occurred shall, without unnecessary delay, give notice of the accident to the Magistrate of the district in which the accident occurred, and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the Governor General in Council appoints in this behalf.

With this section compare [S. 6 of the Regulation of Railways Act 1871 (34 & 35 Vict. C. 78).

Accident:—An accident is not the same as an occurrence, but is something that happens out of the ordinary course of things. *Fenwick v. Schmalz* L. R. 3 C. P. 313, 316; It means an inevitable occurrence not to be foreseen or prevented by vigilance, care and attention and not occasioned or contributed to, in any manner, by the act or omission of the defendant, his agents, servants or employees. *Carroll v. S. Island Ry. Co.* 58 N. Y. 126; 17 Am. Rep. 221. An accident is an event from superior causes, *Gault v. Hennes* 20 Maryland 297. *Inevitable accident* is one not resulting from neglect of any duty. *Parrott v. Wells* 15 Wallace 524.

Reports of railway accidents are not privileged:—Defendants objected to produce certain documents on the ground that they contained statements by various persons of what took place at the time of the alleged accident to enable the defendants to judge whether they could be made responsible to the plaintiff or any other persons. Such statements were made in consequence of a custom or practice in all cases of accidents and that the same constituted the instructions to the defendants' adviser as to defending this action. It was held, that the documents were not privileged. Pigott B says "The possibility of their reports being useful for the purpose of litigation is very different circumstance from that of their having been made for the purpose of or with a view to litigation. *Nemchand Manaji v. R. D. Sethna* 10 Bom. L. R. 796; *Parr v. London Chatham & Dover Ry. Co.* 24 L. T. 558; *Wooley v. North London Co.* 33 L. J. C. P. 317.

When reports are privileged:—The true principle is that if the document comes into existence for the purpose of being placed before a solicitor

get his advice or for the purpose of enabling him to prosecute or defend a suit, then the document is privileged. *S. & V. Water Co. v. Quick* 17 L. J. Q. B. 258; *Cur v. London General Omnibus Co.* 63 L. J. Q. B. 428. Thus it seems, reports made by railway officials relating to accidents to the Railway Board would be privileged.

In the course of working a railway:—Digging of ballast by a railway company upon its own land during construction cannot be called an act done in the course of working any railway—(S. 6 of the Regulation of Railways Act, 1871) *Scott v. Mid. Ry. Co.* (1901) 1 K. B. 317.

Grievous hurt:—For definition See. S. 320 of the Indian Penal Code.

Local Government:—By the General Clauses Act X of 1897 S. 3 (29) "Local Government" shall mean the person authorized by law to administer Executive Government in the part of British India in which the Act or Regulation containing the expression operates, and shall include a Chief Commissioner.

Delegation of powers:—In exercise of the powers given by Sec. 141 (1) the Governor General in Council has, by notification No. 263 of 11th June 1890 delegated to Local Governments in regard to railways under their control, the power of notifying the Magistrates and Police Officers to whom notices of railway accidents are to be given.

Duty of a station master when an accident occurs:—See rule 264 of G. R. R. (1907).

(1). When a report of any accident or obstruction is received by the station master, he must see that all necessary precautions are taken, by the most expeditious means possible, for the protection of traffic.

(2). If an accident happens to a train the station master must arrange for all necessary assistance to be sent to the train.

(3). The station master shall, as soon as practicable, report each accident in accordance with special instructions.

Penalty—Rule 359:—If any railway servant commits a breach of this rule he shall be liable to be punished with a fine which may extend to Rs. 50.

84. The Governor General in Council may make rules consistent with this Act and any other enactment for the time being in force for all or any of the following purposes, namely:—

• Powers to make rules regarding notices of, and inquiries into, accidents.

- (a) for prescribing the forms of the notices mentioned in the last foregoing section, and the particulars of the accident which those notices are to contain;
- (b) for prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred;

- (c) for prescribing the duties of railway servants, police-officers, Inspectors and Magistrates on the occurrence of an accident.

Power to make rules regarding notices of and inquiries into, accidents:—For this See No. 120 T-1-18 Dated Delhi 20 "Febr. 1919. See Bom. Govt. Gazette Part 1 p. 589. 6 March 1919, substituted for rules contained in Enclosure No. 1. to the Government of India circular No. III, Railway dated 14 Feb. 1902, published under Government of India Notif. No. 81 of 7 Mar. 1902.

As regards cancellation, rescission or variation of rules see section 143 post.

As to delegation, of powers of the Governor General in Council see secs. 47 & 144.

Rules for enquiring into and reporting on serious accidents on Indian Railways:—

1. The Notices mentioned in section 83 of the Indian Railways Act, 1890 (IX of 1890), shall contain the following particulars, namely:—

Mileage, or station or both, at which the accident occurred;

Time and date of the accident;

Number and description of the train or trains;

Nature of the accident;

Number of people killed or injured, as far as known;

Cause of the accident, as far as known;

Probable detention to traffic.

2. When any accident such as described in Section 83 of the Indian Railway Act, 1890 (IX of 1890), occurs in the course of working a railway, the Station-master nearest to the place at which the accident has occurred, or while there is no Station-master, the railway servant in charge of the section of the railway on which the accident has occurred shall give notice of the accident by telegraph to the Magistrate of the district in which the accident has occurred and to the officer in charge of the police station within the local limits of which it has occurred.

Note:—(1) For purposes of this rule accidents of a description usually attended with loss of human life are meant to include all accidents to passenger trains such for example as slight collisions, derailments, cases of running over obstructions placed on the line, of passengers falling out of trains, in which no loss of life or grievous hurt as defined in the Indian Penal Code, or serious injury to property has actually occurred but which by the nature of the accident might reasonably be expected to occur; also cases of landslides, or of breaches by rain or flood, which cause the interruption of any important thorough line of communication for at least 24 hours.

3. **Duties of railway servants:—**Every railway servant shall report with as little delay as possible, every accident occurring in the course of working the railway on which he is employed, which may come to his notice. Such

shall be made to the nearest Station-master, or where there is no station-master, to the railway servant in charge of the section of the railway on which the accident has occurred.

4. (1) Whenever any accident, such as described, in Section 83 of the Indian Railways Act, 1890 (IX of 1890), has occurred in the course of working a railway the Agent or Manager shall cause an enquiry to be promptly made by a committee of railway officers (to be called a joint enquiry for the thorough investigation of the causes which led to the accident):—

Provided that such enquiry may be dispensed with.

(a) If the accident has not been attended with loss of human life, or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property; or

(b) If there is no reasonable doubt as to the cause of the accident; or

(c) If one department of the railway intimates that it accepts all responsibility in the matter.

(2) Where such enquiry is dispensed with it shall be the duty of the head of the department of the railway responsible for the accident to make such enquiry (to be called a 'departmental enquiry') as he may consider necessary and his staff or the system of working is at fault, to adopt or suggest such measures as he may consider expedient for preventing a recurrence of similar accidents.

5. (1) Whenever a joint enquiry is to be made, the Agent or Manager shall cause notice of the date and hour at which the enquiry will commence to be given to the following officers, namely:—

(a) the Magistrate of the district in which the accident has occurred, or such other officer as the Local Government may appoint in this behalf,

(b) the Government Inspector appointed under section 4 sub-section 1 of the Indian Railways Act, 1890 (IX of 1890), for the section of the railway on which the accident occurred;

(c) the officer in charge of the railway police, or if there are no railway police the officer in charge of the police station in the jurisdiction of which the accident occurred.

(2) The date and hour at which the enquiry will commence shall be fixed so as to give the officers mentioned in sub rule (1) sufficient time to reach the place where the enquiry is to be held.

6. (1) As soon as any joint or departmental enquiry has been completed, the President of the Committee or the head of the department as the case may be shall send to the Agent or Manager a report which in the case of all accidents of the nature described in explanation 1 to rule 21, (sub rule) (2) must be submitted in the form prescribed by rule 24 (1).

- (2) The Agent or Manager shall forward, with his remarks as to the action it is intended to take in regard to the staff responsible for the accident, or for the revision of the rules or the system of working, a copy of such report
 - (a) to the official mentioned in rule 5, sub-rule (1), clause (b);
 - (b) if no enquiry or investigation has been made under rule 15 or if a Joint or departmental enquiry has been held, first to the Magistrate or officer appointed under rule 5, sub rule 1, clause (a);
 - (c) if any judicial enquiry is being made, to the Magistrate making such enquiry.
 - (3) Such copy shall be accompanied in the case referred to in clause (b) of sub rule (2) by a statement of the persons if any, whom the Agent or Manager desires to prosecute, and in the case referred to in clause (c) of the same sub rule, by a copy of the evidence taken at the enquiry.
 - (4) Whenever the Agent or Manager receives a copy of the Government Inspector's report under rule 23 he shall at once acknowledge its receipt. If he differs from the views expressed in the report, he shall at the same time submit his remarks thereon, or if he is not immediately able to do so, he shall in his acknowledgment of the report, inform the Government Inspector of his intention to submit his remarks later.
 - (5) Whenever the report of the Government Inspector points to the necessity for or suggests a change in any of the rules or in the system of working, the Agent or Manager shall when acknowledging the report, intimate the action which has been taken or which it is proposed to take, to prevent a recurrence of similar accidents, or shall inform the Government Inspector of his intention to report further on the Government Inspector's proposals.
7. (1) Whenever any accident has occurred in the course of working a railway, the Agent or Manager shall give all reasonable aid to the District Magistrate or the Magistrate appointed or deputed under rule 15, and to the Government Inspector, Medical Officers, the police, and others concerned, to enable them promptly to reach the scene of the accident and shall assist those authorities in making enquiries and in obtaining evidence as the cause of the accident.
- (2) When any enquiry under rule 15, or any judicial enquiry is being made, the Agent or Manager shall arrange for the attendance, as long as may be necessary, at the office or place of enquiry, of all railway servants whose evidence is likely to be required.
8. Whenever any accident occurring in the course of working a railway has been attended with grievous hurt as defined in the Indian Penal Code, it shall be the duty of the Agent or Manager to afford medical aid to the sufferers, to see that they are properly and carefully attended to till removed to

home or handed over to the care of their relatives or friends. In any such case, or any case in which any loss of human life or grievous hurt as defined in the Indian Penal Code has occurred, the nearest local medical officer should be communicated with, if he is nearer than any railway medical officer.

9. Duties of police officers:—(1) The railway police may make an investigation into the causes which led to any accident occurring in the course of working a railway and shall do so—

(a) Whenever any such accident is attended with loss of human life as defined in the Indian Penal Code, or with serious injury to property, or has *prima facie* been due to any criminal act or omission; or

(b) Whenever the District Magistrate or the Magistrate appointed under rule 15 has given a direction under clause (c) of that rule.

Provided that no such investigation shall be made when an enquiry has been commenced or ordered under rule 15 clause (a) or clause (b).

(2) The Railway Police shall report, with as little delay as possible, to the nearest Station-master or where there is no Station-master, to the railway servant in charge the section of the railway on which the accident has occurred every accident which may come to their notice occurring in the course of working a railway attended with loss of human life, or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property, or which has *prima facie* been due to any criminal act or omission.

10. (1) Whenever an investigation is to be made by the railway police—

(a) in a case in which an accident is attended with loss of human life, or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property; or

(b) in pursuance of a direction given under rule 15, clause (c).

the investigation shall be conducted by the officer in charge of the railway police, or if that officer should be unable to conduct the investigation himself, then by an officer to be deputed by him.

(2) An officer deputed under sub rule (1) shall ordinarily be an Assistant Superintendent of Police, but if in any case it should be found impracticable to depute an officer of that grade, an Inspector of Police may be deputed in case of collisions between trains of which one is a train carrying passengers, or if derailment of any train carrying passengers or if any part of such a train, and an officer in charge of a police station in case of accidents attended with loss of human life or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property.

11. The officer who is to conduct an investigation in pursuance of rule 10 shall proceed without delay to the scene of the accident and conduct the investi-

gation there, and shall at once advise the Agent or Manager of the Railway and the Traffic Officer of the district by telegraph of the date and hour at which the investigation will commence so that, if possible, the presence of a railway official may be arranged for, to watch the proceedings and to aid the officer making the investigation. The absence of a railway official must not however, be allowed to delay the investigation which should be made as soon as possible after the accident has taken place.

12. (1) In every case to which rule 10 applies, immediate information shall be given by the railway police to the district police, who, if so required, shall afford all necessary assistance, and shall, if occasion arises, carry the investigation beyond the limits of the railway premises. But the railway police are primarily entrusted with the duty of carrying on the investigation within such limits.

(2) Subject to any provisions elsewhere contained in these rules, the further prosecution of the case, on the conclusion of the police investigation, shall rest with the railway police.

13. The result of every police investigation shall be reported at once to the Magistrate of the district or other officer appointed in this behalf by the Local Government, and to the Agent or Manager of the Railway or other officer appointed by him.

14. Where there are no railway police, the duties imposed by rules 9, 10, and 11, rule 12 sub rule (2), and rule 13 on the railway police, or on the officer in charge of the railway police shall be discharged by the district police or by the district Superintendent of Police as the case may be.

15. **Duties of Magistrates:**—Whenever an accident such as described in section 83 of the Indian Railways Act, 1890 (IX of 1890), has occurred in the course of working of a railway, the District Magistrate or any other Magistrate who may be appointed in this behalf by the Local Government may either—

- (a) himself make an enquiry into the causes which led to the accident;
- (b) depute a subordinate Magistrate, who if possible, should be Magistrate of the first class, to make such an enquiry; or
- (c) direct an investigation into the causes which led to the accident to be made by the police.

16. Whenever it is decided to make an enquiry under rule 15 clause (a) or clause (b) the District Magistrate or other Magistrate appointed as aforesaid or the Magistrate deputed under rule 15, clause (b) as the case may be, shall proceed to the scene of the accident and conduct the enquiry there, and shall at once advise the Agent or Manager of the railway and the Government Inspector by telegraph of the date and hour at which the enquiry will commence so as to enable the railway administration to summon the requisite expert evidence.

17. A Magistrate making an enquiry under rule 15 may summon any railway servant and any other person whose presence he may think necessary, and after

the evidence and completing the enquiry, shall, if he considers there are sufficient grounds for a judicial enquiry, take the requisite steps for bringing to trial any person whom he may consider to be criminally liable for the accident. Whenever technical points are involved, the Magistrate should call for and take the opinion of the Government Inspector or other professional persons.

18. The result of every enquiry made under rule 15 shall be communicated by the Magistrate to the Agent or Manager of the railway and to the Government Inspector.

19. If in the course of any judicial enquiry into an accident occurring in the course of working a railway, the Magistrate desires the assistance of the Government Inspector or of the Agent or Manager of the railway or the attendance of any officer of the railway to explain any matter relating to railway supervision, management, or working he will issue a requisition to such officer to attend the court stating at the same time the nature of assistance required. In summoning railway servants the Magistrate will take care not to summon so large a number of the employees, specially of one class, on the same day, as to cause inconvenience to the working of the railway. In the case of very serious accidents it will generally be advisable for the Magistrate to receive either the evidence of, or a report from, both the Government Inspector and the Agent or Manager of the railway in regard to the accident before finally concluding the judicial enquiry.

20. On the conclusion of any such judicial enquiry the Magistrate shall send a copy of his decision to the Agent or Manager of the Railway, and shall unless in any case he thinks it necessary to do so, report the result of the enquiry to the Local Government.

21. Duties of the Government Inspector appointed under section 4 sub section (1) of the Indian Railways Act. 1890. (IX of 1890):—(1) Whenever the Government Inspector receives notice under section 83 of the Indian Railways Act. 1890 (IX of 1890) of the occurrence of an accident which he considers of a sufficiently serious nature to justify such a course, he shall report the occurrence direct to the Government of India direct by telegraph.

(2) Every such report shall contain the particulars prescribed by rule 1.

Explanation 1:—For the purposes of this rule every accident to a train (whether carrying passengers or not) which is attended with loss of human life or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property which is roughly estimated to cost say Rs. 5,000 or over, also every accident, such as a landslide, breach by rain or flood, derailment etc., which causes the interruption of any important through line of communication for at least 24 hours, shall be deemed to be an accident of a "sufficiently serious nature".

Explanation 2;—When a serious accident occurs at a station where the charges of two or more Government Inspectors meet, the duty of complying with rule 21 (1) shall devolve on the Government Inspector within whose jurisdiction the railway working the station lies.

22. (1) The Government Inspector shall, whenever he receives notice as aforesaid of an accident which he considers serious enough to warrant an enquiry or investigation being made under any of these rules, proceed to the scene of the accident to note the facts and to enquire generally into the causes which led to the accident. If the Government Inspector, after reporting to the Government of India the occurrence of an accident in accordance with rule 21, decides that an enquiry or investigation by himself is not necessary, he shall in every such case advise the Government of India accordingly by letter.

(2) Whenever an enquiry under sub rule (1) is made by the Government Inspector, he shall, if practicable, be present at the joint enquiry (if any) made under rule 4, sub rule (1).

23. Whenever the Government Inspector has made an enquiry under rule 22, sub rule (1) or when he disagrees with or considers it necessary adversely to criticise the report of the joint or departmental enquiry or the working of the railway, he shall submit a report in writing through the Senior Government Inspector to the Local Government or Administration controlling the railway and to the Government of India, or in the case of a railway which is directly administered by the State, to the Government of India only; and shall forward copy of such report to the Agent or Manager of the railway concerned and if a magisterial enquiry has been made to the Magistrate who made such enquiry.

24. (1) In the case of all accidents of the nature described in explanation 1 to rule 21 (sub rule (2)), the reports referred to in rule 6 and in rule 22, sub rule (1) shall be submitted in the form adopted by the Inspecting Officers of the Board of Trade, and shall contain,

- (1) a brief description of the accident;
- (2) a description of the locality of the accident;
- (3) a detailed statement of the evidence taken;
- (4) the conclusions arrived at, at the joint or departmental enquiry.
- (5) an appendix stating the damage done;
- (6) (when necessary) a sketch illustrative of the accident; and
- (7) in the case of the report submitted by the Government Inspector the conclusion arrived at by him.

(2) Reports in connection with accidents which although coming under section 83 of the Indian Railways Act, 1890 (IX of 1890), are accidents of the nature described in explanation 1 to rule 21 (sub rule (2)), will be submitted to the Government of India.

the opinion of the Senior Government Inspector, they contain features of special importance or requiring special notice. When the Senior Government Inspector recommends the publication of such a report, it should be in the form adopted by the Inspecting Officers of the Board of Trade; when not recommended for publication it may be in the form of a letter explaining as briefly as possible the special features which the Senior Government Inspector desires to bring to notice.

25. If the Agent or Manager makes any remark on the Government Inspector's report under rule 6 sub rules (4) and (5) or expresses an intention to do so, the Government Inspector shall inform the Government of India, and the Local Government or Administration controlling the railway, of the steps which have been or are proposed to be taken by the railway administration to prevent a recurrence of similar accidents, and whether, in his opinion, further action in the matter is desirable.

26. The Government Inspector shall, as far as possible, assist any Magistrate making an enquiry under rule 15 or a magisterial enquiry, whenever he may be called upon to do so.

27. Nothing in these rules shall be deemed to limit or otherwise affect the exercise of any of the powers conferred on Government Inspectors by section 5 of the Indian Railways Act, 1890 (IX of 1890).

85. Every railway administration shall send to the Governor General in Council a return of accidents occurring upon its railway, whether attended with personal injury or not, in such form and manner and at such intervals of time as the Governor General in Council directs.

Submission of return of accidents.

Submission of return of accidents.—For Rules regarding the submission of accident returns:—See enclosure No. 2 to the Government of India circular No. III, Railway of 14th February 1902 published under Government of India Notif. No. 81 of 7th March 1902.

Penalties:—As to penalties for delay in submitting returns under Sec. 52 or 85, see Sec. 92; as to making false returns see Sec. 105; and as to the recovery of such penalties see Ss. 97 and 98.

Rules regarding return of accidents to be submitted by railway to G. G. in Council:—In exercise of the powers conferred by S. 85 of the Indian Railways Act (IX of 1890), and in supersession of the like rules as published with the notification of the Government of India P. W. D. No. 303, dated the 7th July 1898, the Governor General in Council is pleased to issue the following rules with regard to the returns of accidents to be submitted by railway Administrations to the Governor General in Council, namely:—

1 The returns shall be prepared in the forms hereto appended, respectively
 -parts I to V, and Tables 1 and 2 and shall be accompanied by all necessary
 remarks and explanations by the railway officials by whom they are prepared.
 The returns shall be submitted not later than three weeks after the close of the
 year to which they relate. The returns, whether submitted in manuscript or in
 print shall be set forth on one side of the paper only.

2 The returns shall comprise all accidents of the following classes, namely:—

- (a) All cases of loss of or injury to life or limb from causes connected with the working of railways,
- (b) All cases of injury to the permanent way, stock, or works, whether attended or not by injury to life or limb.
- (c) All accidents of any kind likely to have endangered life or limb, or to have caused serious loss of property, such, for example, as cases of trains running over chairs placed on the line, or persons falling out of trains, but who are not injured in any way, or of fires in trains not resulting in injury to the way, stock, or works, &c: Provided that in such cases the following additional rules shall be observed, namely;—

(1) All cases of chairs, stones, or other obstructions placed on the line being met within the course of working, shall be reported in Part I, but shall not be included in Table No. 2 of the returns, unless the obstructions have been actually run over, and it shall also be recorded whether such articles were supposed to have been maliciously placed on the line so as to have amounted to attempt at train wrecking.

(2) In cases of fire attributed to sparks from the engine, it shall be recorded whether the engine was fitted with a spark-arrester, and, if so, the pattern shall be stated, as also the description of the fuel used. In cases in which there is no reason to suppose that the spark escaped from the ash-pan, it shall be stated what if any, precaution has been taken to check the escape of sparks therefrom.

(3) Cases of averted collision shall be reported in Part I, but shall not be included in Table No. 2 of the returns, as they are not accidents for purposes of the accident returns.

(d) All Cases, without exception, of cattle being thrown off the line or run over; Provided that in such cases the following additional rules shall be observed, namely:—

(i) Whether cattle are actually run over or are merely thrown off the line, all cases of cattle coming in contact with
 shall be included in the accident returns.

19. (1) Accidents to trains of a railway exercising running powers over another shall be treated, for the purposes of these returns, as accidents of the line owning the trains, as accidents of this nature; (2) accidents at Joint Stations shall be similarly treated. Other accidents at Joint Stations or on lines on which running powers are exercised, shall be included in the returns of the working or owning line.

20. Accidents occurring:—

(a) in railway workshops, or (b) on new works not open for traffic, or (c) on lines under construction, or (d) on lines not used for the public carriage for passengers, animals or goods; or (e) to steamers or flats working in connection with railways, shall be entered in the briefest possible manner in Part V only, and not entered in any other Parts or Tables of the returns. Accidents of the nature referred to in this rule shall also, when necessary, be reported in accordance with the provisions of the Indian Factories Act, 1831 (XV of 1831).

(See Gazette of India 1902, Part I p. 193, General Statutory Rules & Orders Vol. III page 1522).

86. Whenever any person injured by an accident on a railway

Provision for compulsory medical examination of person injured in railway accident.

claims compensation on account of the injury, any Court or person having by law or consent of parties authority to determine the claim may order that the person injured be examined by some duly qualified medical practitioner named in the order and not being a witness on either side, and may make such order with respect to the cost of the examination as it or he thinks fit.

With this section compare s. 26 of the Regulation of Railways Act, 1863 (31 & 32 Vict. C. 119).

Report when privileged:—Any report or communication by an agent or servant to his master or principal, which is made for the purpose of assisting him to establish his claim or defence in an existing litigation, is privileged and will not be ordered to be produced, but if the report or communication is made in the ordinary course of the duty of the agent or servant whether before or after the commencement of the litigation, it is not privileged, and must be produced. The time at which the communication is made, is not the material matter, nor whether it is confidential, nor whether it contains facts or opinions. The question is whether it is made in the ordinary course of the duty of the servant or agent or for the instruction of the master or principal as to whether he should resist or maintain litigation." *Woolley v. N. L. Ry. Co.* L. R. 4 C. P. 602; *Wallace v. Jeffries* 2 Bom. 453; *Nemchand v. R. D. Steinhilber* 10 Bom. L. R. 796. But in *The London Tilbury & Southend Ry. Co. v. Kirk & Randall* 51 L. T. 599 the defendants claimed privilege for certain reports made to them by their servants as having been made in the ordinary course of duty & a Divisional Court held they were privileged.

Reports made by medical men at the request of the solicitors of a Railway Company, as to the condition of a person threatening to sue the company for injury from a collision are privileged. *Woodey v. N. L. Ry. Co.* (supra); but there is no privilege in respect of such information "not called into existence by the solicitor" though obtained by him for purposes of litigation, *Chadwick v. Bowman* 16 Q. B. D. 561. *Wheeler v. Le Marchant* 17 Ch. D. 681; *Anderson v. Bank of Columbia* L. R. 2 Ch. D. 644.

In *Fenner v. The London & S. E. Ry. Co.* 41 L. J. Q. B. 313 per Blackburn J. at p. 315—"The principle I think to be derived from all the cases is that when it appears that the documents are substantially rough notes for the case to be laid before the legal advisers or supply for the proof to be inserted in the brief, the practice of the court should as a general rule, be to refuse inspection." Also see notes to S. 83.

CHAPTER IX.

PENALTIES AND OFFENCES.

Forfeitures by Railway Companies.

87. If a railway company fails to comply with any requisition made under section 13, it shall forfeit to the Government the sum of two hundred rupees for the default and a further sum of fifty rupees for every day after the first during which the default continues.

Penalty for default in compliance with requisition under section 13.

As to the recovery of penalties see Secs. 97 and 98.

88. If a railway company moves any rolling-stock upon a railway by steam or other motive power in contravention of section 16, sub-section (2), or opens or uses any railway or work in contravention of section 18, section 19, section 20 or section 21, or re-opens any railway, or uses any rolling-stock, in contravention of section 24, it shall forfeit to the Government the sum of two hundred rupees for every day during which the motive power, railway, work or rolling stock is used in contravention of any of those sections.

Penalty for contravention of section 16, 18, 19, 20, 21 or 24.

89. If a railway company fails to comply with the provisions of section 47, sub-section (6), section 54, sub-section (2), or section 65, with respect to the books or other documents to be kept open to inspection or conspicuously posted at station on its railway, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

Penalty for not having certain documents kept or exhibited at stations under section 47, 54 or 65.

90. If the railway company fails to comply with the provisions of section 47 with respect to the making of general rules, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

Penalty for not making rules as required by section 47

91. If a railway company refuses or neglects to comply with any decision of the Governor General in Council under section 48, it shall forfeit to the Government the sum of two hundred rupees for every day during which the refusal or neglect continues.

Penalty for failure to comply with decision under section 48.

Cf. S. 11 of the Railway Regulation Act, 1842 (5 & 6 Vict. c. 55).

92. If a railway company fails to comply with the provisions of section 52 or section 55 with respect to the submission of any return, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.

Penalty for delay in submitting returns under section 52 or 55.

93. If a railway company contravenes the provisions of section 53 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections, it shall forfeit to the Government the sum of twenty rupees for every day during which either section is contravened.

Penalty for neglect of provisions of section 53 or 63 with respect to carrying capacity of rolling-stock.

94. If railway company fails to comply with any requisition of the Governor General in Council under section 62 for the provision and maintenance in proper order, in any train worked by it which carries passengers, of such efficient means of communication as the Governor General in council has approved, it shall forfeit to the Government the sum of twenty rupees for each train run in disregard of the requisition.

Penalty for failure to comply with requisition under section 62 for maintenance of means of communication between passengers and railway servants.

Cf. S. 22 of the Regulation of Railways Act, 1868 (31 & 32 Vict. C. 119).
See Sec. 62.

95. If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females or the provision of closets therein, it shall forfeit to the Government the sum of twenty rupees for every train in respect of which the default occurs.

Penalty for failure to reserve compartments for females under section 64

Compartment:—For the meaning of the word "Compartment" See notes to Ss. 64, 110 and In Re. Dadabhai 24 Bom. 293.

96. If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, it shall forfeit to the Government the sum of one hundred rupees for every day during which the omission continues.

Penalty for omitting to give the notices of accidents required by section 83 and under section 84.

97. (1) When a railway company has through any act or omission forfeited any sum to the Government under the foregoing provisions of this Chapter, the sum shall be recoverable by suit in the District Court having jurisdiction in the place where the act or omission or any part thereof occurred.

Recovery of penalties.

(2) The suit must be instituted with the previous sanction of the Governor General in Council, and the plaintiff therein shall be the Secretary of State for India in Council.

(3) The Governor General in Council may remit the whole or any part of any sum forfeited by a railway company to the Government under the foregoing provisions of this Chapter.

98. Nothing in those provisions shall be construed to preclude the Government from resorting to any other mode of proceeding instead of or in addition to, such a suit as is mentioned in the last foregoing section, for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act,

Alternative or supplementary character of remedies afforded by the foregoing provisions of this Chapter.

Offences by Railway Servants.

99. If a railway servant whose duty it is to comply with the provisions of section 60 negligently or wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees.

Breach of duty imposed by section 60.

90. If the railway company fails to comply with the provisions of section 47 with respect to the making of general rules, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

Penalty for not making rules as required by section 47

91. If a railway company refuses or neglects to comply with any decision of the Governor General in Council under section 48, it shall forfeit to the Government the sum of two hundred rupees for every day during which the refusal or neglect continues.

Penalty for failure to comply with decision under section 48.

Cf. S. 11 of the Railway Regulation Act, 1842 (5 & 6 Vict. c. 53).

92. If a railway company fails to comply with the provisions of section 52 or section 55 with respect to the submission of any return, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.

Penalty for delay in submitting returns under section 52 or 55.

93. If a railway company contravenes the provisions of section 53 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections, it shall forfeit to the Government the sum of twenty rupees for every day during which either section is contravened.

Penalty for neglect of provisions of section 53 or 63 with respect to carrying capacity of rolling-stock.

94. If railway company fails to comply with any requisition of the Governor General in Council under section 62 for the provision and maintenance in proper order, in any train worked by it which carries passengers, of such efficient means of communication as the Governor General in council has approved, it shall forfeit to the Government the sum of twenty rupees for each train run in disregard of the requisition.

Penalty for failure to comply with requisition under section 62 for maintenance of means of communication between passengers and railway servants.

Cf. S. 22 of the Regulation of Railways Act, 1868 (31 & 32 Vict. C. 119) Sec. 62.

95. If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females or the provision of closets therein, it shall forfeit to the Government the sum of twenty rupees for every train in respect of which the default occurs.

Penalty for failure to reserve compartments for females under section 64.

Compartment:—For the meaning of the word "Compartment" See 'notes to Ss. 64, 110 and In Re. Dadabhai 24 Bom. 293.

96. If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, it shall forfeit to the Government the sum of one hundred rupees for every day during which the omission continues.

Penalty for omitting to give the notices of accidents required by section 83 and under section 84.

97. (1) When a railway company has through any act or omission forfeited any sum to the Government under the foregoing provisions of this Chapter, the sum shall be recoverable by suit in the District Court having jurisdiction in the place where the act or omission or any part thereof occurred.

Recovery of penalties.

(2) The suit must be instituted with the previous sanction of the Governor General in Council, and the plaintiff therein shall be the Secretary of State for India in Council.

(3) The Governor General in Council may remit the whole or any part of any sum forfeited by a railway company to the Government under the foregoing provisions of this Chapter.

98. Nothing in those provisions shall be construed to preclude the Government from resorting to any other mode of proceeding instead of or in addition to, such a suit as is mentioned in the last foregoing section, for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act,

Alternative or supplementary character of remedies afforded by the foregoing provisions of this Chapter.

Offences by Railway Servants.

99. If a railway servant whose duty it is to comply with the provisions of section 60 negligently or wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees.

Breach of duty imposed by section 60.

100. If a railway servant is in a state of intoxication while on duty, he shall be punished with fine which may extend to fifty rupees, or, where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway, with imprisonment for a term which may extend to one year, or with fine or with both.

Drunkenness. **Drunkenness:**—Drunkenness of a guard or under-guard in charge of a railway train or any part thereof is an offence under section 35 of Act XVIII of 1862 *Madras Railway Co. v. Jones* 1 Mad. II. C. 193.

Procedure:—A magistrate proceeded in the first instance, as if the case fell under the first part of this section and adopted the procedure for summons cases; eventually the accused was convicted of an offence under the latter part of the section, which contemplates a warrant case, held that the action of the Magistrate was illegal. *In Re Trousdell* 5 Mad. L. T. 204.

Cognizable sections of the Indian Railways Act:—S. 100.—Railway servants drunk on duty. S. 101.—Railway servants endangering the safety of persons. S. 119.—Male persons entering carriage or other place reserved for females. S. 120.—Intoxication or indecency on the part of any person, or interfering with the comfort of passengers or extinguishing a lamp. S. 121.—Obstructing a railway servant in his duty. S. 126.—Maliciously wrecking or attempting to wreck a train. S. 127.—Maliciously hurting or attempting to hurt persons travelling by rail. S. 128–129.—Endangering safety of persons travelling by railway, by (a) wilful act or omission, or (b) rash or negligent act or omission. S. 130. (i) minors guilty of offences noted in Ss. 126 to 129.

101. If a railway servant, when on duty, endangers the safety of any person—
Endangering the safety of persons.

(a) by disobeying any general rule made, sanctioned, published and notified under this Act, or

(b) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

(c) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.

Evidence:—Under sec. 101 of the Railways Act the offence consists in (1) disobeying rules or doing any rash or negligent act and (2) thereby endangering

the safety of any person. It is not sufficient to show that the act of the accused or any omission on his part was likely to endanger the safety of any person. It must be proved affirmatively that it did in point of fact so endanger any person's safety. *Crown v. Ganeshdas* 11 P. L. R. (1910) Cri. Case No. 8. p. 19; 11 Lawyer 1-8-1910.

Intention of Legislature—Offences:—It appears to have been the intention of the Legislature to make only those acts or omissions offences which themselves lead or might lead to certain results, and to leave all subsidiary acts or omissions to be dealt with departmentally. *Sant Das v. Emp. Punj.* C. C. (6-11-1894); no sanction is necessary to the institution of a complaint of an offence punishable under this section. *Queen Emp. v. Fattu* 9 P. R. 1892 (Cr.)

Meaning of Danger:—Danger is a relative term. It may be immediate or remote; but it is none the less danger, because it is remote and therefore there is a better chance of avoiding it.

Although the danger was averted by the two trains being brought to a standstill at a distance of some 300 yards from one another, that is practically equivalent to an admission, that upto the time of stopping the trains, there was danger. *Fazal Din v. Emp.* 13 P. R. 1906 (Cr). 65; 59 P. L. R. 1907.

Degree of danger necessary to constitute offence:—To constitute an offence under sec. 101 of the Indian Rys. Act of 1890, the act or disobedience must itself endanger the safety of persons; thus where the accused by disobedience of general rule 28 did not himself endanger the safety of any person, but merely facilitated a second act of disobedience by another person, which did endanger safety, it was held that the accused could not be convicted of an offence under sec. 101. *Sant Das v. Emp.* (supra). *Hakumatrai v. Empress Punj.* C. C. No. 1956 of 1895; *Nga Ba Lin v. King Emp.* 7 Burma L. T. 101; 22 Ind. Cas. 161. *Govind-rao v. Emp.* 25 K. L. R. 116.

Meaning of "endangering":—In every case where a travelling railway train is unexpectedly shunted on to a wrong line by an erroneous laying of the points in a station yard, the safety of the persons in the train or about the yard is endangered within the meaning of that term in sec. 101 of the Ry. Act and if the error in the points is due to such disobedience as is referred to in the enactment, an offence punishable thereunder is committed. *Local Government v. Har Pershad* 13 N. L. R. 90; 18 Cr. L. J. 322; 41 Ind. Cas. 646.

Endangering the safety of persons—collision:—(1) The prisoner, a servant of the railway company, was convicted under S. 29 of Act XXV of 1871, of endangering the lives of the persons in a certain train by negligence. There was no evidence that the safety of any persons had been endangered by his neglect of duty. On the contrary by reason of precautions taken by other persons, any possible danger which might have resulted from his neglect was avoided. Held that he could not be convicted. *Queen v. Manphool* 5 N. W. P. 240, But see *Emp. v. Ramahandra* 15 Bom. L. R. 792=37 Bom. 685.

(2) Liability to conviction under S. 25 of Act IV of 1879 arises not from the consequences directly referable to the breach of the rule, but because of the danger which the breach of the rule entails. *Snell v. Queen* 6 Mad. 201; 7 Ind. Jur. 246.

(3) As regards punishment the gravity of the offence should be estimated not by the actual ultimate consequences but by the risk involved, for the rule breaker might be punished even though no accident occurred. *Emperor v. Ramkandra* 15 Bom. L. R. 702=37 Bom. 685.

Safety not actually endangered:—Sec. 101 of the Railways Act does not provide for cases in which the disobedience of a rule is merely *likely* or *calculated to endanger* the safety of any person. In order to sustain a conviction under the section, it must be affirmatively proved that the disobedience of the rules by the railway servant *actually* and in *point of fact* endangered the safety of some person.

Where, under rules 87 and 87 (a) of the rules framed under the Railways Act, the guard of a train sends a message asking for assistance, it is the duty of the driver to ascertain the terms of the message, and his omission to do so would make him liable under s. 101 (c) of the Act, if such omission results in endangering the safety of any person. *Local Govt. v. Khairat Ali* (1920) 21 Cr. L. J. 204; 54 Ind. Cas. 988.

(4) The Bengal Nagpur Railway is worked on the "line clear and caution message" system, no train being allowed to leave a station without a "line clear" certificate in a prescribed form to the effect that the line is clear upto the next station. The petitioner, the asst. station master of G. station who was on duty and busy issuing tickets to passengers wrote out in the prescribed form book the following conditional line clear message, although he had received no message from S. Station. "On arrival of 15 down passenger at G. line would be cleared for No. 80 Up goods train from G to S". All the particulars required by the rule were not filled in, no number was entered on it nor was the time of the arrival filled in. The form-book was left in the station master's room. The Guard of No. 80 Up goods train which was waiting at G, entered the station master's room in his absence, took the imperfect certificate out of the book and without reading it appended his signature, passed it on to the driver and gave the signal for the train to start, all without the knowledge of the petitioner.—The result was a collision between the 15 Down passenger and 80 Up goods train causing the death of several persons. The petitioner was convicted under this section and S. 304A of the I. P. Code. Held, that the act of the petitioner did not in itself endanger the safety of other persons and that the effect was too remote to be attributed to such a cause. *Shanler Balkrishna v. King Emp.* 32 Cal. 73; *SantDas v. Emp.* Punj. C. C. (6-11-94) followed.

Driving a train without a "line clear" amounts to endangering the safety of persons:—The petitioner, a railway fire-man started a goods train without having been given a "line clear" and drove it some four miles down

the line. Another goods train was coming on the same line from the opposite direction. However by the precautions taken by the petitioner and the driver of the other train, the two trains were brought to a standstill at a distance of some 300 yards from each other, thus no loss or injury was caused. Held that the safety of the persons on the two trains was endangered by the act of the petitioner within the meaning of this section and that he was rightly convicted. *Fazal Din v. Emp.* 13 P. R. 1906. *Snell v. Queen* 6 Mad. 201 followed.

Disobedience of rules.—A, an assistant station master at P. having ascertained that the line was clear to D, a next station, gave the ticket conveying authority to proceed to the guard of a Down train which was then waiting at his station. He then received a message from D. asking him to withdraw the ticket in order to allow an Up train to proceed from D to P. In contravention of the rules by which he was bound, he at once signalled to D that the line was clear without first getting back the ticket from the guard. On going out to get the ticket he found that the Down train had started. The result was that the two trains met between the stations, although the drivers were able to stop in time to avoid a collision.

Being prosecuted under this section for endangering the safety of persons by disobedience of rules, A pleaded that he told the guard of the Down train not to start without telling him. Held that although if the guard started without A's verbal permission, he also contravened a rule. A's disobedience of the rule in connection with the written ticket was more serious and was the principal cause of the danger that ensued; and so he was rightly convicted. *Emp. v. R. Gyi.* 9 Cr. L. J. 348; 4 L. B. R. 353; followed in *Shankar v. King Emp.* 32 Cal. 73; *Public Prosecutor v Bentley & Munaswamy* Mad. H. Ct. (4-10-92).

(2) A, an assistant station master expecting the arrival of a Down Mail train in his station, instructed his Jamadar, to let it come into the station main line and after it had come in, to set the points at the up-end of the station, so as to allow an Up-goods train to proceed from a side-line. At the time of issuing these instructions, he gave the keys of the points to the Jamadar, although the points were already set for the main line. The Jamadar, without waiting for the Mail to come in set the point for the said line on which the goods train stood. On the approach of the Mail, A allowed the signal to be given for it to enter the station without further satisfying himself as required by the rules by which he was bound, that the points were correctly set. The Mail in consequence collided with the goods-train. Held that A endangered the safety of many persons by his disobedience to the rules and his conduct therefore brought him within the terms of Cl. b. of S. 101. *Emp. v. M. N. Atcharamayya* 9 Cr. L. J. 352; 4 L. B. R. 350; *Emp. v. Bhattacharji* N. W. P. High Court May 2nd 1892; *Crown v. Fattu* Punj. C. C. September 1892; *Appaswamy*, Weirs Rep. 569. *The Ag. Govt. Pleaders v. Bentley* Mad. H. Ct. 1892. *Santdas v. Emp.* (supra). *Hakumatrai v. Emp.* (supra). *Joseph Dulben v. Emp.* 1896 Punj. C. C. *Mullineaux v. Emp.* Punj. C. C. Case No. 973 of 1890. as regards lights in the station see p. 183.

Disobedience of rules-Responsibility of Station Master:—(1) No. 3 Up-mixed train arrived at station at 11-24 P. M. The down goods No. 30 which crosses the train at S was due at 11-43 P. M. As the passenger train was on platform line, the goods train ran on to the station siding and facing the points to the north which are as a rule kept locked for trains coming into the station platform line, and had to be unlocked and again locked over for the siding line. This however was not done on the night in question and consequently the goods train came on to the station line and collided with the passenger train which was standing in the station. The cow-catchers of the engines were broken, and one or two passengers were shaken; but with these exceptions no other damage was caused. Held that the S. M. who was bound to see that facing points are securely locked before allowing a train to come in, was responsible for the accident. *Emp. v. Bhattacharji N. W. P. II. C. 2nd May 1892.*

(2) The accused gave line clear to Ludhiana for No. 5 Up train and prepared a line clear ticket for No. 12 Down train to proceed to Ludhiana from Ludhawal and handed it over to the Guard before No. 5 Up train arrived. Then the Guard gave it to the driver of the train. No. 12 Down train started and collided with No. 5 Up train between Ludhiana and Ludhawal with the result that some persons were killed and several injured. Held that the accused endangered the safety of the passengers by his disobedience of the rules and his conduct therefore brought him within the terms of section 101 (b) of the Act, *Muhammad v. King Emperor Punj. C. C. case No. 697 of 1908.*

(3) The accused, a station master, in contravention of Rule 28 which requires that a line clear "message shall not be written out, wholly or in part, till required, wrote out such a message in his book; that the guard entered in the office during the absence of the station master, tore out the message and started the train and caused an accident. Held that the disobedience of Rule 28 by the accused did not itself endanger the safety of any person; it merely facilitated a second disobedience by another person, which did endanger safety. To constitute an offence under this section, the act or disobedience must itself endanger safety.

If the doctrine of constructive or contributory negligence was to be applied, it would be difficult to say where one could stop. *Santidas v. Emp. Punj. C. C. 6th November 1894 (Cri. Re. case No. 1049 of 1894) Hakimatrai v. Emp. Punj. C. C. 1895; Shankar Balkrishna v. Emp. 32 Cal. 72.*

(4) Where in consequence of the omission of a station master to take down the line clear signal, a mixed train was run into the station and a collision took place in which one wagon was derailed, but as the train was moving slowly, no person was injured. Held that the omission on the part of the station master constituted an offence under this section. *Joy Gopal Banerjee, v. Emp. 11 C.W.N. 173; 5 Cr. L.J. 16.*

(5) The assistant S. M. of T. allowed a goods train to proceed to the next station D. without informing the staff of the latter station of his doing so and

without previously obtaining a line clear message from that station. A passenger train was nearing D. from opposite direction and the goods train was detained by the distant signal of the D. station till the line was clear to receive the goods train. Held, that the Assistant S. M. could not be convicted of the offence under Sec. 101. of the Railways Act, because under this section, it is not sufficient to show that the act of the accused or any omission on his part was likely to endanger the safety of any person. It must be proved affirmatively that it did in point of fact so endanger any person's safety. *Crown v. Ganeshdas Punj*. L. R. (1910) Criminal Case No. 8 = 8 P. L. R. 1910; 6 Ind. Cas. 483; *Nga. Ba. Lu. v. King Emperor* 7 Burma L.T. 101.

(6). Rule 247 of the Railway Rules, throws on the station master, the responsibility for ensuring that all points are correctly set and all facing points securely locked for the passage of trains. So where a station master omitted to inspect the points and satisfy himself that they were correctly set, before he ordered the signal to be lowered and allowed the mail to enter the station, and the mail, in consequence came in on a side line and collided with the goods train there. Held, that he disobeyed the rule which he was bound to obey and thereby endangered the safety of persons and that he therefore committed an offence under Cl. B of this section. *King Emp. v. M. N. Atchatradmyya* (supra.).

Responsibility of Station Master for working—Rule 244:—(1) The Station Master shall be responsible for the efficient discharge of the duties devolving upon the several members of the staff employed, either permanently or temporarily under his orders, at the station or within such limits; and such staff shall be subject to his authority and direction in the working of the station.

(2). The Station Master shall also be responsible, that the general working of the station is carried out in strict accordance with the rules for the time being in force.

Rule 245:—The Station Master shall see that all signals, all points, all gates of level-crossings and the whole working machinery of his station are in proper working order, and shall immediately report all defects therein to the proper authority.

Rule 246:—(a) The Station Master must make himself thoroughly acquainted with the duties of the staff employed in the signal boxes, if any, at his station, and must satisfy himself that they perform their duties correctly; (b) in order to maintain an effectual supervision over the said staff, must frequently visit the signal boxes.

Rule 247:—The Station Master must take steps to ensure,—(c) that the switches of all traps, slip-sidings and catch-sidings when it is not necessary that they should be open, are set against the line which they are intended to protect; (b) that all points are correctly set, in accordance with special instructions, for the passage of trains or vehicles, and that all facing points are securely locked for the passage of trains; and (c) that all signals at his station are correctly worked.

Where a station master omitted to inspect the points and satisfy himself that

they were correctly set, before he ordered the signal to be lowered, and allowed the mail to enter the station, and the mail in consequence came in on a side line, and collided with the goods train there. Held, that he disobeyed the rule and thereby endangered the safety of many persons. *King Emp. v. A. C. Dass*, 4 L. B. R. 139. See also *King Emp. v. M. N. Atcharamayya*, 4 L. B. R. 350; *Snell v. Queen* 6 Mad. 201 and *Burma Ry. Co. v. Fex Cr. R.* No. 1500 of 1901 referred to.

Disobedience of rules—responsibility of guard.—Where a train is stopped outside a distant signal at danger, the omission of the guard to place detonators to protect the train is a disobedience to Rule 9 of G. I. P. Ry. working instructions & is punishable under s. 101 (b) and not under s. 101 (a) of the Railway Act.

When the guard of a train is charged under sec. 101 (b) of the Railway Act, the burden of proof that he did not place the requisite number of detonators, as required by General Rule 36, read with Rule 9 of G. I. P. Ry. working instructions, is upon the prosecution. *K. Bezanji v. Emp.* 14 Cr. L. J. 676 = 21 Ind. Cas. 996.

What are facing and trailing points:—Points are *facing* when the lines to which they lead diverge. Points are *trailing* when the lines from which they lead converge. In other words points are facing, when they open to admit an engine or vehicle and are trailing when they open to let out an engine or vehicle. When points are facing, the thin end of the switch or tongue rail, faces the approaching engine or vehicle; when points are trailing the thin end of the switch or tongue rail leads away from the approaching engine or vehicle. Gangooly's Manual of Traffic Examination. 5th Edition page 37.

Engine driver to exercise great care—The driver of an engine about to cross at midnight an unfenced level crossing laid across a public highway should exercise the greatest amount of care. *Abdul Lalif v. Pauling & Co. Ltd.* 19 Bom. L. R. 167; 38 Ind. Cas. 773.

Responsibility of Drivers and Gate-Keepers:—(1) It is the duty of a Ry. Co. to give adequate warning (whistling) of an approaching train. *Jenner v. S. E. Ry. Co.* (1911) 27 T. L. R. 445.

(2) The duty of a gateman is to see his lamps properly lighted and to lower his signal and *open his gates when he hears a train coming.* The accused, a gateman, being asleep on duty did not open his gates when a train was coming, and that the accused was therefore negligent on duty and that the safety of human beings was thereby put in danger and that he does not become free from responsibility because the engine-driver also neglected to stop his train before reaching the gate. Both the Gateman and the Engine-driver come within the reach of this section, the former by reason of not having the gates open before an approaching train, the latter by not stopping the train short of the closed gates. *Crown v. Fatu Punj*, C. C. 7th September 1891; 9 P. R. 1892.

(3) The driver of a Down goods train standing in the loop line waiting to pass an Up-passenger train received a line clear ticket prepared for the latter train and started his train without satisfying himself that the ticket was for his train disregarding the signal which was against him, the consequence being that his train collided at the crossing with the passenger train which was running from the opposite direction. He was charged and convicted under sec. 101 for endangering the safety of the passengers by disobeying the general rules. *Shahabdin v. King* Punj. C. C. Case No. 455 of 1908.

(4) In this case the duty of the gate keeper was, on the approach of the train to warn the station by an electric bell that the train was in sight, and then on the lowering of the platform and repeating semaphores by the officials at the station to open the gates and then lower the Bastion semaphore to permit the train to come in. On the night in question he went to sleep and neglected to watch for the train, warn the station and open the gates or lower the Bastion semaphore to let the train in, and that the driver improperly passed the Bastion semaphore while it showed the red (danger) signal and coming up at an excessive speed ran through and smashed the gates at the level crossing. Both were held guilty under this section because for a railway driver to pass a danger signal and go on when the line is not clear must necessarily endanger the lives of all persons crossing the line as well as those of persons in the train, while the conduct of the gate keeper in going to sleep and omitting to open the gates caused similar danger. *Acting Govt. Pleader v. Bentley and Muniswamy* Mad. H. C. 4th Oct. 1892; 1 Weir 868.

(5) The accused ran through signals which were against him and there would have been no accident but for the action of S. M. in shunting engines in defiance of Rules. He was found guilty of endangering the safety of the persons in the train he was driving, by disregarding signals that were at danger and running through them. An engine-driver when he sees that signals are at danger, must know or at all events have reason to believe that they have been put at danger, because there is danger, that if his train runs through them, there will be an accident and he cannot escape on the plea that danger ought not to have been caused by the improper shunting of engines. It was enough for him that he was ordered by signal to stop and he was bound to obey orders unquestionably. *Mullineaux v. Emp.* Cr. Ap. 297 of 1896 Punj. C. C; *Fazulshah v. Emp.* Cr. R. 973 of 1890 Punj. C. C. *King Emp. v. Karima Baksh* Punj. C. C. Case No. 159 of 1908; *Shahab Din v. King Emp.* Punj. C. C. Case No. 455 of 1908. If the driver of a railway-engine drives at a dangerous speed, or from negligence causes the train to be thrown off the rails, or to come into collision with another train, the railway company is responsible for all damages that may have been sustained by the passengers. *Collett v. L. & N. W. Ry.* 16 L. B. 984, 20. L. J. Q. B. 411. *Skinner v. L. B. & S. C. Ry.* 5 Exch. 787, *E. I. Ry. v. Kalidas* 28 Cal. 401 (P. C.) But if a railway train runs off the line in consequence of the wilful and malicious act of a stranger, who has placed a stone on the railway, then as there is no negli-

on the part of the railway company, they are not responsible for the consequences. *Latch v. Rimmer Ry.* 27 L. J. Ex. 155.

(6) The accused, the driver of a train on approaching the distant signal of a station, saw that it was against him. The facing points of the line on which a goods train was at the time 600 yards from the distant signal, the driver failed to stop the train and collided with the goods train while it was crossing the facing points. Held that the accused might have stopped his train short of the facing points; that his inability to do so was due to his not having his train under control within the meaning of General Rule 245 (a) and consequently he was guilty of an offence under sec. 101 (a) of the Railways Act of 1890. *Fazal Shah v. The Empress Punj. C. C. Case No. 973 of 1890.*

Rash or negligent Act.—A, a servant of a railway company charged with moving some trucks by coolies on an incline, discharged his duties negligently and in consequence, lost control of the trucks. One of the coolies while attempting to stop the trucks was killed. Held that A had caused the cooly's death by his negligence within the meaning of S. 301 A, I. P. Code. *Emp. v. Nandkishore* 6 All. 243.

(2) Where the accused sent two boxes containing fire-works to a railway company falsely declaring them to contain iron-locks and while loading, one of the boxes exploded, killed one cooly and injured another and damaged the railway waggon. Held, that the act of the accused was either rash or negligent. *Emp. v. Kamrudin* P. R. 22 of 1905 = 2 Cr. L. J. 207.

(3) The accused was charged under s. 46 of Act IV of 1879 with pulling up an iron mile-post and placing it across the rails. This was done in the dusk of the evening and the mail train might have been derailed. Held that, when an act unlawful in itself is wilfully done, rashness cannot usually be predicated. *Emp. v. Shivappa* Bom. Cr. R. 14 of 1889.

(4) A Railway guard failed to give to the engine driver a signal to sound his whistle before starting the engine which he was bound to do under the Railway Rules. The engine having been put in motion caused a boy, who was painting a waggon on the line, injury which resulted in his death. Held that this amounted to a rash and negligent act. *Emp. v. Thompson* Bom. Cr. R. 47 of 1894.

(5) Where an Asst. S. M. on duty at a station gave the line clear on his own responsibility on a foggy night knowing that another train was standing at a particular point and the train which was allowed to pass came into collision with the standing train. Held that the granting of line clear under the circumstances was in itself a rash and negligent act which rendered him amenable to punishment *Taptiprasad v. Emp.* 15 A. L. J. R. 590 = 41 Ind. Cas. 335.

(6) To sleep while on duty was certainly a rash act or omission; and that any train running without an engine was dangerous to the men in the train and any thing coming in contact with it.

To detach in a high wind an engine without informing the guard or taking other steps than put down the brakes, when the train was on a steep gradient, was an extremely rash act on the part of the driver; that his blowing his whistle was not enough but that he should have satisfied himself that it had been heard by the guard. *King Emperor v. Guard Beheranjee and Driver Vira of Bhawnagar* 13 K. L. R. 119; see also *Public Prosecutor v. Brindley* Mad. H. Ct. (24-4-1907).

(7) An engine driver was taking an engine which was letting off steam along a public thorough fare at a time when the traffic was exceptionally heavy and within a few yards of a large number of horses and carriages which had been packed together, in spite of warnings from the Police, that to do so would endanger the public safety. Held that he was guilty of an offence under sec. 336 I. P. C. though he might have believed that no danger in fact be caused. *George Loveday* (1887) 1 weir 337.

Omission:—The conviction of A, a labourer, employed for carrying stones under S. 46 of Act IV of 1879 for omission to remove a stone near the rail, was held to be illegal, as he was not legally bound to remove. *Emp. v. Fakira Bom.* Cr. R. 50 of 1881.

If a gate-keeper when on duty endangers the safety of any person by any negligent omission, he commits an offence punishable under this section. *Crown v. Fattu Punj.* C. C. 7th September 1892=9 P. R. 1892.

When separate punishment can be inflicted for two offences:—When one act constitutes two offences, separate punishment for each offence can only be inflicted if both offences are against the same law. *Rahmutulla v. Emp.* 38 Ind. Cas. 433.

102. If a railway servant compels or attempts to compel, or causes, any passenger to enter a compartment which already contains the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

Compelling passengers to enter carriages already full.

Railway servant:—Railway servant is a person employed by the owners or lessees of the railway or the persons working the railway in connection with the services of the railway.

The employment is by appointment and the service of a railway includes collecting the tickets and fares from passengers *Chitrula, v. Bhoomana* (1920) 54 Ind. Cas. 414.

Passenger-meaning of:—The word passenger in the Railway Act includes a ticket holder even before he has boarded the train *Crown v. Harising* 44 P. R. Cri. No. 26 of 1910. p. 88.

Accommodation for passengers:—The railway company are bound to use reasonable care in providing accommodation for passengers and the passengers are also bound to use reasonable care in availing themselves of the accommodation.

provided for them. *Praeger v. B. & E. Ry. Co.* 24 L. T. 107 cited in *G. I. P. Ry. v. Keshowji* 7 Bom. L. R. 119 at p. 127.

Allowing passengers to enter compartment already full is an offence:—In allowing passengers to enter a compartment in excess of the number for which it is intended the railway company is guilty of negligence. *Ishwari v. King Emp.* (1922) 1 Patna 260.

103. If a station-master or a railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, he shall be punished with fine which may extend to fifty rupees.

Omission to give notice of accident.

Omission to give notice of accident:—Where some coolies were employed in assisting a ballast train into motion at a railway station and one of them, after pushing the train, in getting up on the train or in attempting to do so, fell and was so injured that he afterwards lost his life—held that, the evidence did not show that it was the duty of the guard to see that no one got up on the train when in motion, *Queen v. Flood* 8 W. R. Cr. 43.

Coolies on ballast train:—Guards in charge of ballast train must before giving the signal to start, see that all the coolies are on the train and must warn them to sit down *G. R. R.—Rule 281 (1st part).*

Rule 44 (Part II) Guards to prevent breaches of rule:—Guards must exert themselves to prevent any breach of the rules by passengers or other persons (b)

104. If a railway servant unnecessarily—

Obstructing level-crossing.

(a) allows any rolling-stock to stand across a place where the railway crosses a public road on the level, or

(b) keeps a level-crossing closed against the public, he shall be punished with fine which may extend to twenty rupees.

Cf—S. 5, the Railway Clauses Act, 1863 (26 and 27 Vict. C. 92.)

105. If any return which is required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to one year, or with both.

False returns.

Compare this section with S. 10 of the Regulation of Railways Act, 1871 (34 and 35 Vict. C. 78).

Returns required by this Act:—See Ss. 5 (b), 52 and 85.

Penalties:—See S. 92 as regards penalties for delay in submitting returns under Ss. 52 or 85 and as regards recovery of penalties See, Secs. 97 & 98.

False returns:—The accused was in charge of K. Station; that it was his duty before despatching the Down Mail to obtain line clear message from S; that he did not do so but concocted one and made it appear as if it had been received in due course; that he handed it to the driver of the mail as his warrant to proceed on his journey. Held that there was no evidence to justify the inference of the "knowledge" required by S. 45 of Act IV of 1879 (Cf. present section) *Emp. v. Sri. Kishen* 2 All. W. N. 172.

Other Offences.

106. If a person requested under section 58 to give an account with respect to any goods gives an account which is materially false, he and if he is not the owner of the goods, the owner also shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

Giving false account of goods.

Any person who is the owner or has the care of goods sent by railway must on demand give a correct account in writing signed by him of the nature and quantity of the goods. Any such person who gives a false account, or refuses to give such account on demand, is liable to a penalty. (Railway Clauses Act, 1845 Ss. 88 and 89); and if any person brings goods to a station for carriage and makes a false statement as to the nature of the goods in order to get the advantage of the lower rate, that person is liable to punishment. *Baar, Mooring & Co. v. L. & W. Ry. Co.* (1905) 2 K. B. 113.

Giving false account of goods:—Two boxes containing fire-works but declared to contain iron-locks were sent by the accused at Delhi. In loading, one of the boxes exploded killing one cooly and seriously injuring another. Held that the accused was rightly convicted. *Kamrudin v. Emp.* 22 P. R. 1905. (Making a false description of the goods with a view to evade payment of the correct freight *Gulamali v. Queen Emp. Punj. C. C.* (11-12-1899); *London & N. W. Ry. Co. v. Richerly* (1921) 1 K. B. 231.

Master criminally not liable for act of servant.—By the general principles of the criminal Law, if a matter is made a criminal offence, it is essential that there should be something in the nature of *mens rea*. *Prima facie* therefore, a master is not to be made criminally responsible for the acts of his servant to which the master is not a party, but it may be the intention of the Legislature, in order to guard against the happening of the forbidden thing to impose a liability upon the principal even though he does not know of, and is not a party to the forbidden act done by his servant. Such is the case with quasi criminal offences. To find out whether the master is to be held criminally liable, irrespective of *mens rea*, one must have regard while the language of the statute is open to doubt, to the avowed purpose of the act, and consider

whether a particular construction will render the act effective or non-effective for that purpose. Prima facie a principal is not to be made criminally responsible for the act of his servant yet the legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute; in which case the principal is liable, if the act is in fact done by his servant. To ascertain whether a particular act has that effect or not, regard must be had to (1) the object of the statute, (2) the words used (3) the nature of the duty laid down on the person upon whom it is imposed (4) the person by whom it would in ordinary circumstances be performed (5) and the person upon whom the penalty is imposed" (Per Atkin J.) The owner of goods, a limited Co. were held guilty of giving a false account of goods with intent to avoid payment of tolls, though the false account were in fact given by their manager, without the knowledge or instructions of the Directors. *Mossell Bros. v. London & N. W. Ry.* (1917) 2 K. B. 836. Ref. *Queen v. Tyabali* 24 Bom. 423; *Emp. v. Baba Lal* 31 All. 319. The test of liability laid down in *Beharilal v. K. Emp.* (1911) 8 A. L. J. R. 1324. s. c. 34 All. 146 is unsound.

107. If in contravention of Section 59 a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway.

Unlawfully bringing dangerous or offensive goods upon a railway.

Sending dangerous goods by railway—action for compensation for destruction of life:—Held, (Parson J. dissenting) "that a person who sends an article of a dangerous and explosive nature to a railway company to be carried by such company without notifying to the servants of the company the dangerous nature of the articles is liable for the consequences of an explosion, whether it occurs in a manner which he could not have foreseen as probable or not. Held also, that such a person is liable for the consequences of an explosion occurring in a manner which he could not have foreseen as probable or not. Held also, that, such a person is liable for the consequences of an explosion occurring in a manner which he could not have foreseen, if he omits to take reasonable precautions to preclude the risk of explosion." *Lyell v. Ganga Das* 1 All. 60.

(2) Sending goods under a false description is an offence under this section 7 P. R. 1900. In order to convict a person under this section, it is necessary to prove a guilty knowledge of the character of the goods. *Heaven v. Garton* 78 L. J. M. L. 215. See S. 59.

(3) The defendant caused a carboy containing nitric acid to be delivered to the plaintiff, a servant of a carrier, in order that it might be carried by such carrier for

the defendant; the defendant did not take reasonable care to intimate to the plaintiff that the contents of the carboy were dangerous, but only informed him that it was an acid. The plaintiff was burnt and injured by reason of the carboy bursting whilst, in ignorance of its dangerous character, he was carrying it on his back from the carrier's cart. Held that the defendant was liable for the consequences. *Farrant v. Barnes*, 3 L. J. C. P. 137 *Parry v. Smith* L. R. 4. C. P. D. 325; *Brass v. Maitland* 26 L. J. Q. B. 49; *Bawfield v. Goolle & Sheffield Transport Co.* (1910) 2 K. B. 94; 79 L. J. Q. B. 1070 (in which ferro silicon was given to the Co. for carriage without notifying its dangerous nature). *Williams v. East India Company* 3 East 192; *Nitro-Glycerine case* (1872) 15 Wallace 524; *Fargrove Steam & Navigation Co. Ltd. v. G. W. Ry. Co.* 15 Cal. W. N. p. cx.

Responsibility for unlawfully bringing dangerous goods on a railway:— If a railway carriage be rendered dangerous to the passengers travelling therein by reason of the fact that there are fire-works in it and if the carrying of the fireworks could have been prevented by the exercise of due care on the part of the railway company, they are liable for damages for negligence, should an explosion of the fire-works occur; but it is not the duty of the railway servants to search every parcel that passed the ticket barrier carried by a passenger *E. I. Ry. Co. v. Kalidas* 26 Cal. 465 and 28 Cal. 401; 5 Cal. W. N. 449; 3 Bom. L. R. 293.

Guilty knowledge must be proved:— A guilty knowledge is necessary to support a conviction under this section. *Hearne v. Garton* 28 L. J. M. C. 216; negligence alleged against a railway company must be proved affirmatively where denied *E. I. Ry. Co. v. Kalidas* 28 Cal. 401.

Death caused by explosion-false declaration:— Two boxes containing fire-works but declared to contain iron locks, were sent by the accused at Delhi. In loading, one of the boxes exploded killing one cooly and seriously injuring another. The accused was convicted of offences under Sections 304 and 308 I. P. Code. Held, that the conviction was right. Even if nothing else had happened, the accused could have been convicted under this section for making a false declaration in respect of the two boxes consigned. It is a rule of criminal law that in cases of this kind, it is no defence that the deceased was guilty of contributory negligence. *Kamrudin v. Emp.* 22 P. R. 1905 = 2 Cr. L. J. 207; *Regina v. Crome* 3 C. & K. 123; *Queen v. Williamson* 1 Cox. C. C. 97.

The defendants, a firm of carriers received a wooden case to be carried to its destination but its contents were not known or communicated. At an intermediate station, the contents were found leaking. The case was therefore taken to the defendants' offices, which they had rented from the plaintiffs, and a servant of the defendants proceeded to open the case for examination, but the nitro-glycerine exploded, all the persons present were killed, much property destroyed, and the building was damaged. In an action brought by the landlord for damage to the building the defendants admitted their liability for waste as to the premises occupied by them but disputed it as to the rest of the building. It was held that the defendants not bound to know, in the absence of reasonable grounds of

contents of packages offered them for carriage and that without such knowledge in fact, and without negligence, they were not liable for damage caused by the accident. *Nitro-Glycerine case (supra)*.

108. If a passenger, without reasonable and sufficient cause, makes use or interferes with any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees.

Needlessly interfering with means of communication in a train.

Any passenger who makes use of the said means of communication without reasonable and sufficient cause is liable for each offence. Regulation of Railways Act, 1863, S. 22; *Girjashanker v. B. B. & C. I. Ry.* (1917) 20 Bom. L. R. 126; *Jones v. Bithell & Anr* (1919) 1 K. B. 219; *Ishwardas v. King Emp.* (1922) 1 Patna 260.

Use of means of communication without reasonable and sufficient cause:—Any passenger who makes use of means of communication without reasonable and sufficient cause commits an offence under the section irrespective of the distance which the train travels without stopping *Jones v. Bithell* (1919) 1 K. B. 219.

Reasonable and sufficient cause:—No hard and fast rule can be laid down as to what must constitute reasonable and sufficient cause and that it must depend upon the circumstances of each case whether there was such a cause as to justify a passenger interfering with the pulling of the chain. Overcrowding a compartment to suffocation is a reasonable and sufficient cause entitling a passenger to pull the communication chain and have the compartment vacated so as to reduce the number of passengers to the prescribed limit. *Ishwardas v. Emp.* (1922) 66 Ind. Cas. 321; (1922) 1 Patna 260.

Assault by railway servant—liability of Company:—The offence of pulling the communication chain without reasonable and sufficient cause was one in respect of which the company itself had no power of arrest and that therefore if assault is committed by any of its servants it would be outside the scope of their authority and the course of their employment and the Co. was not liable therefore. *Girjashanker v. B. B. & C. I. Ry.* 20 Bom. L. R. 126; 45 Ind. Cas. 715.

109. (1) If a passenger, having entered a compartment which is reserved by a railway administration for the use of another passenger, or which already contains the maximum number of passengers exhibited therein or thereon under section 63, refuses to leave it when required to do so by any railway servant, he shall be punished with fine which may extend to twenty rupees.

Entering compartment reserved or already full or resisting entry into a compartment not full.

(2) If a passenger resists the lawful entry of another passenger into a compartment not reserved by the railway administration for the use of the passenger resisting or not already containing the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

Passenger meaning of:—A person who is a ticket holder is regarded as a passenger even before he has actually boarded the train, *Crown v. Harising Punj*. C. C. 14th May 1910; 44 P. R. (1910) 90; 11 Lawyer Part II Sept. p. XCVIII.

Another passenger, meaning of:—The term "passenger" in the expression another passenger in Sec. 109 (1) is not restricted to a person who actually enters a railway carriage for the purpose of travelling but also includes possible passengers who may join at any latter station *In Re Komaran and Govindasami* (1922) 42 Mad. L. J. 21; (1922) 45 Mad. 215.

Power of railway, administration to reserve accommodation for particular class of passengers:—A railway Co. has the right to regulate its own traffic in its own way, and is competent to reserve accommodation for a passenger or class of passengers and such reservation is not forbidden by sec. 42 (2) as being an undue or unreasonable preference in favour of a particular description of traffic. S. 109 contemplates such reservation for possible & actual passengers.

Such reservation is not in contravention of the rules of the railway and any person entering such compartment who is not of the class for which it has been reserved and refusing to leave it when required to do so, renders himself liable to prosecution under S. 109; (It is lawful for a Railway Co. to reserve a compartment for the use of Europeans and Anglo-Indians only) *In re Komaran & Anr* (1922) 66 Ind. Cas. 520; 42 Mad. L. J. 21; 30 Mad. L. T. 134; 45 Mad. 215 (1922); *Emp. v. Brijbasilal* 42 All. 327; (1920) 55 Ind. Cas. 342; 18 A. L. J. 254; 21 Cr. L. J. 294; *Narayan Gogte v. King Emp.* (21-10-1922) Bombay High Court. But the Railway authorities, had no right to forcibly eject the trespasser from the compartment so reserved. The Ry. Act confers express power of removal in certain cases but gives no such power in the cases dealt with in sec. 109. (1) which includes that if a passenger who has entered a compartment reserved for use of another passenger is liable to be prosecuted under the section and thus by implication prohibits the exercise of such right. *Mathuradas v. Secy. of State* 13 Ind. Cas. 237; 5 S. L. R. 141; *Emp. v. Brijbasilal* (Supra). *Vishwnath v. G. I. P. Ry.* (1921) 23 Bom. L. R. 809; *Perth General Committee v. Rose* (1897) A. C. followed.

Obstructing passengers from entering into compartment not full is an offence:—If a passenger obstructs other passengers from entering into his carriage not containing the maximum number of passengers exhibited therein or thereon falsely alleging that it is already overcrowded commits an offence falling under sec. 109 (2) *Crown v. Harising* (Supra); If he obstructs the lawful entry

of another passenger he is liable to be removed from the train, under sec. 120 cl. c. of Ry. Act. (*Ibid*). *Hari Sarup v. Emp.* 31 P. W. R. 1910 Cr; 26 P. R. 1910 Cr; 200 P. L. R. 1910 Cr.

Right of passengers to resist entry:—The effect of Secs. 63, 93 & 109 of the Act is to confer a right upon the occupants of a compartment in a train to resist the entry of passengers in excess of the number for which the compartment is intended, and in order to enforce the right, a passenger is entitled to invoke the aid of the railway officers at any station or of the officer in charge of the train when it is in motion or in a station. *Ishwardas v. King Emp.* (1922) 1 Patna 260.

In allowing passengers to enter a compartment in excess of the number for which it is intended the Railway Co. is guilty for negligence. *Ishwardas v. King Emp.* (1922) 1 Patna 260.

Remedy open to a passenger in case of breach of rules-reservation:—When a person finds matter for objection in a rule authorising the reservation of a compartment of a particular train, for the use of a certain class of passengers only, his remedy is not to commit a deliberate breach of the rule but to move through the authorities referred to in Chap. V. of the Rys. Act. *Brijbasilal v. Emp.* 42 All. 327-(1920) 55 Ind. Cas. 332=18 A. L. J. 254=21 Cr. L. J. 294.

Refusing to vacate an ordinary compartment which the railway administration subsequently intends to reserve—no offence:—A passenger entered a compartment which was not labelled as reserved, nor was any intimation given to the passengers that it was a reserved compartment. At an intermediate station, station master informed him to vacate saying it is to be reserved; Held, that the compartment not being reserved at the time the accused entered it, he committed no offence under the section which makes a refusal to vacate a compartment which is already reserved punishable. *Sayed Abdul Arab v. Emptror* (17 September 1912) 17 Cal. W. N. p. VIII.

110. (1) If a person, without the consent of his fellow passengers, if any, in the same compartment smokes in any compartment except a compartment specially provided for the purpose, he shall be punished with fine which may extend to twenty rupees.

(2). If any person persists in so smoking after being warned by any railway servant to desist, he may, in addition to incurring the liability mentioned in sub-section (1) be removed by any railway servant from the carriage in which he is travelling.

Meaning of the word compartment:—"It means a division separated by partition; a part partitioned off".—Oxford New Dictionary. In certain sections of

the Railways Act, (IX of 1890) the quality of complete separation should be attributed and it is with that force, that it is used in S. 110. Per Ranade J.—The word "Compartment" is used in S. 110 of this Act in the same sense in which it is used throughout the Act, and does not necessarily mean a completely partitioned division. *In Re Dadabhai Jamshedjee* 24 Bom. 293; 1 Bom. L. R. 688.

Smoking:—The purpose of the section is to secure that no one shall smoke in a railway carriage so as to be an annoyance to any fellow passenger (*Ibid*). Any person who—(a) is found smoking, &c. (b) * * * (c) persists in smoking on any other portion of the railway premises after being warned by a railway servant or a police officer to desist, shall if the act is deemed by the authorised officer to be dangerous, immediately be removed from the railway premises. (G. R. R. 28, Part II).

111. If a person, without authority in this behalf, pulls-down or wilfully injures any board or document set up or posted by order of a railway administration on a railway or any rolling-stock, or obliterates or alters any of the letters or figures upon any such board or document, he shall be punished with fine which may extend to fifty rupees.

Defacing public notices.

This section is adapted from Section 146 of the Companies Clauses Act, 1845 (8 Vic. C. 16).

112. If a person, with intent to defraud a railway administration:—

- (a) enters in contravention of section 68 any carriage on a railway, or
- (b) uses or attempts to use a single pass or single ticket which has already been used on a previous journey or, in the case of a return ticket, a half thereof which has already been so used,

Fraudulently travelling or attempting to travel without proper pass or ticket.

he shall be punished with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

Meaning of the Section:—In construing a bye-law similar in terms to this section, that *mens rea*, the intention to defraud, must be proved for obtaining a conviction.—*Per Cockburn C. J. in Bentham v. Hoyle*, L. R. 3, Q. B. D. 289; See also *Khuloda Prasad. v. Emp.* 11 C. W. N. 100; 5 C. L. J. 47; 4 Cr. L. J. 439; *Queen Emp. v. Rampal* 20 All. 95.

Travelling without ticket without intent to defraud is no offence:—Travelling in a carriage without a pass or ticket but without intent to defraud, is not a criminal offence. *Mahammad v. A. W. Farley & Anr* 25 Cal. L. J. 610.

Application of the section-travelling beyond the place for which a ticket is taken:—Sec. 112 of the Indian Ry. Act does not apply to the case of a person who having entered a carriage with a proper ticket travels on the strength of that ticket beyond the place authorised by it. The act appears to contain no provision for the judicial punishment of a person who intentionally travels beyond the place for which he has a *proper pass or ticket* and the only course open to the railway officers in such a case is to proceed under Sec. 113 of the Act. *N. B. Ry. v. Devidutt* 9 C. P. L. R. Cri. 1.

Fraudulent intention:—Fraudulent intent under Sec. 112 of the Indian Ry. Act 1890 is proved if on being asked to produce his ticket, the accused does not at once tell the ticket collector that he has no ticket but produces a ticket which has already been used. *Hirachand v. Empress Punj. C. C. Case No. 221 of 1896*

Intention to defraud necessary:—Petitioner was charged under S. 112 with entering a railway carriage without a ticket with intent to defraud the Ry. He pleaded guilty to entering the carriage but said as the train was about to start he had no time to purchase a ticket. This is a denial of having intended to defraud and he therefore should not be convicted. *Banwari Lal v. Emp. (1920)* 57 Ind. Cas. 825; 21 Cr. L. J. 665; *Radha Kishen v. Emp. (1922)* 68 Ind. Cas. 346 (Lahore H. Ct.)

Essence of offence under sec. 112-knowledge of breach of railway rules whether evidence of intention to cheat:—The fact that a passenger is travelling by a railway train and, on being called upon, produces a ticket bearing date of a previous day throwing away another in his possession, cannot lead to an inference of dishonest intention so as to justify a conviction under s. 112 of the Railways Act, the essence of the offence under that section being an intent to defraud the Railway Company.

In the absence of any evidence from which it can be clearly inferred that a passenger knows that the ticket he is holding has been used before, an intention on his part to cheat the Railway Company cannot be inferred from the mere fact that the passenger is aware that he is committing a breach of the Railway Act or rules framed thereunder.

Where there is nothing on a ticket intimating to its holder that, under the railway rules, it is only available for a particular train or on a particular day, his knowledge of the railway rules cannot be inferred from the fact that the rules have been posted on the Railway Stations, unless and until it is proved that the attention of the particular traveller was drawn to them. *Manindra Nath Mitter v. Bengal Nagpur Ry. Co.* 35 Ind. Cas. 665; 17 Cr. L. J. 361.

Travelling with a false ticket with intent to defraud—offence under the section:—The essence of an offence under S. 112 of the Railway Act is dishonest or fraudulent intention i. e. the intention to defraud the Railway Administration of its just dues i. e. the fare payable by a passenger. Travelling with a false and entirely irrelevant ticket with fraudulent or dishonest intention

is an offence under S. 112 (a) of the railways Act *Khuloda Prasad v. Emp.* 11 C. W. N. 100; *Hirachand v. Emp.* Punj. C. C. 1896; *Emp. v. Sahara* Punj. C. C. 1895, *Queen v. Rampal* 20 All. 95. see also 27 P. R. 1905.

(2) A person travelling in a first class carriage with a second class ticket without any intention to defraud the company is not guilty of the offence under this section. To hold him liable, an intention to defraud the company must be clearly proved, *Bentham v. Hoyle*, (supra). *Barnes v. Mid. Ry. Co.* Ir. L.R. 1 C. L. 130.

(3) "Without having paid his fare" means the fare for the class by which the passenger travels. A passenger who, with a second or a third class ticket, travels in a superior class with intent to defraud, is liable to be convicted under this section. *Gillingham v. Walker* 44 L. T. 715 = 29 W. R. 896.

(4) A passenger had used on a day after that upon which the ticket had been issued the return half of a ticket which was available on the day of issue only. By a bye-law of the company "any passenger using a ticket on any day for which such ticket was not available" was subject to a penalty. There was no intent to defraud, and consequently the passenger could not be convicted and that the bye-law was invalid. *Huffam v. North Staffordshire Ry. Co.* (1894) 2 Q. B. 821.

(5) A passenger may be convicted for travelling without having previously paid his fare with intent to avoid payment notwithstanding that the fare has been previously demanded. *Noble v. Killick* 60 L. J. M. C. 61.

(6) A person who buys half of a return ticket marked "not transferable" issued to another, and travels with it, travels without having previously paid his fare, with intent to avoid payment thereof. *Langden v. Howell* 4 Q. B. D. 337.

(7) When a man endeavoured to evade payment of a railway fare by the production of an old pass altered as to date and number of persons, it was held, he was rightly convicted of an attempt to cheat. *Gunput* P. R. No. 6 of 1868.

(8) A bye-law of a railway company provided that every person attempting to defraud the railway company by, in any manner, endeavouring to evade payment of his full fare is liable to a fine of Rs. 100. A passenger handed over his luggage to a fellow-passenger and the company proceeded against him under this bye-law for evading payment for his luggage. Held that the bye-law does not apply to this case. *Emp. v. Parasram* 4 P. L. R. 548.

(9) A railway company offered some concession rates to student travellers and a certificate was presented by some body-not the accused-containing the names of students who had not applied for the certificate which the accused did not know and the endorsement of the railway official "may be issued" was made there on, and the accused thereafter presented the same for the necessary pass to be issued. The company issued the pass and arrested the accused. It was held that the accused being himself entitled to travel at the reduced rate was not guilty of any fraudulent intent; no fraudulent intention could be assumed on the part of the accused to use the pass for persons not entitled to

travel at the reduced rates and that as the company had not been defrauded the accused could not be convicted. *James Fletcher* (1910) M. W. N. 510. *Reynolds v. Beasley* (1919) 1 K. B. 215.

Travelling with a forged pass:—A person who travels with a forged pass but who has not been proved to have shown the pass to a ticket examiner or other railway official before the completion of his journey can only be convicted of an attempt under secs. 419 and 511 I. P. Code. *Govinda Swamy Naidu v. Emp.* 21 Mad. L. J. 748; 12 *Lawyer* part II 173.

Fare means the amount fixed for taking a passenger from one station to another, *Emp. v. Parasram* 4 P. L. R. 518. see also s. 67.

Attempt to travel:—The act of buying an unused half of return ticket does not in itself amount to an attempt to travel within the meaning of the railway Act. *Ratanlal Un. Cr. C.* 123.

Exchanging of railway tickets:—A & B were about to travel by the same train from Benares city. A had a ticket for Ajodha. B had two tickets for Benares Cantonement. A handed over her ticket to B, asking him whether the ticket was alright; B under the pretence of returning A's ticket substituted one of his own and kept A's ticket with him. Held, that the offence committed by B was that of criminal misappropriation and not of cheating. *Emp. v. Raza Hussain* 25 All. W. N. 9.

Travelling without a ticket and an attempt to palm off used ticket are not distinct offences:—Travelling without a ticket comes within the words of S. 68 and so under S. 112 (a). Entering into the train and travelling without a ticket and the attempt to palm off an used ticket upon a railway servant are not separate and distinct offences. The intention to cheat him and the Railway Administration is one and the same offence. The element of the offence under S. 417 I. P. Code is precisely the same as that of one under S. 112 of the Railways Act, and a person therefore cannot be sentenced under both the sections separately for the same offence. *Khulodaprasad v. Emp.* (Supra); *Emp. v. Sahara* Punj. C. C. 1895.

Father travelling with his son without paying latter's fare amounts to an offence:—Thus where the accused, a father, travelled in the company's railway with his son aged about six years from one station to another without first buying a half ticket for his son and paying the fare thereof was held guilty as an abettor though not as a principal offender under Sec. 32 of Act IV of 1879 (corresponding with Sec. 112), Mad. H. Ct. (12 Dec. 1868); 1 Weir 869.

Act penal under General and Special Acts—sentence under Special Act:—It is ordinarily desirable that when an act or omission is made penal by two Acts, one General and the other Special, the sentence should be passed under the Special Act. *Khulodaprasad v. Emp.* (supra); *Emp. v. Sahara* (supra). If one Statute make the doing of an act felonious and the subsequent Act make it only penal, the latter is considered as a virtual repeal of the former. *Lee v. Danger* L. R. (1892) 2 K. B. 337 at p. 348; *Rea v. Davis* 4 Leach Cr. C. 271.

Entering into railway carriage without ticket is no offence:—Merc entry into the railway carriage without an intent to defraud does not constitute an offence within the meaning of Sec. 112 of the Railways Act. *Emp. v. Ata-Ullah* 27 P. R. (1905) Cr; *Khulodoprasad v. Emp.* 11 C. W. N. 100.

Production of a false certificate amounts to cheating—not forgery:—The prisoner, a fireman applied for employment, and forwarded with his application a copy of a certificate purporting to have been granted to him by another railway authority, to the effect that the accused had been employed as an engine driver on that railway and was of good conduct, when in fact no such certificate had been issued to him nor had he ever worked as an engine driver on that railway. It was held that he was guilty of an attempt to cheat, and not of forgery. *Fazal Din v. Emp.* 1. P. R. 1907; 57 P. L. R. 1907; 5 O. C. 232.

113. (1) If a passenger travels in a train without having a proper pass or a proper ticket with him or, being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made there-

for under Section 69, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf the excess charge hereinafter in this section mentioned, in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets, of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined, or, in case of their having been examined more than once, were last examined.

(2) If a passenger travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket, or travels in or on a carriage beyond the place authorized by his pass or ticket he shall be liable to pay, on the demand of a railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to any difference between any fare paid by him and the fare payable in respect of such journey as he has made.

(3) The excess charge referred to in sub-section (1) and sub-section (2) shall,—

(a) where the passenger has immediately after incurring the charge and before being detected by a railway servant notified

to the railway servant on duty with the train the fact of the charge having been incurred, be one rupee, two annas or eight annas, and

(b) in any other case, be six rupees, one rupee or three rupees, according as the passenger is travelling or has travelled or has attempted to travel in a carriage of the highest class or in a carriage of the lowest class or in a carriage of any other class or kind:

Provided that such excess charge shall in no case exceed,—

- (a) where the liability to pay it arises under sub-section (1) the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that sub-section, or
- (b) where such liability arises under sub-section (2), the amount of the difference between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made.

(4) If a passenger liable to pay the excess charge and fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on demand being made therefor under one or other of those sub-sections, as the case may be, the sum payable by him shall, on application made to any Magistrate by any railway servant appointed by the railway administration in this behalf, be recovered by the Magistrate from the passenger as if it were a fine imposed on the passenger by the Magistrate and shall, as it is recovered, be paid to the railway administration.

Nature of Section:—The Magistrate must first satisfy himself that the sum claimed is payable by the passenger i. e. (1) that he has travelled beyond the place authorised by his ticket; (2) that the excess charge allowed by the section has been demanded by the railway administration in this behalf; and (3) that there has been a failure or refusal by the passenger to comply with the demand.

A Grey v. Emp. 26 P. R. 13 (Cr. App. 98 of 1891).

Procedure:—Where a person is charged under S. 113 of the Rys. Act for travelling without a ticket and he denies that he travelled by train, the proper method of dealing with the case is to hold an inquiry and take evidence as to his liability to pay and how much is payable by him. An order imposing a penalty without any such inquiry is bad in law. *Station Master Ranaghat v. Habul Sheikh* (1920) 55 Ind. Cas. 593; 24 Cal. W. N. 195 = 21 Cr. L. J. 321.

Fraudulent intention not necessary:—If the accused had no intention to defraud, his case would fall under this section; if he had any, his case would fall, under S. 112. *Emp. v. Hussenadin* Bom. C. R. 31st Jany. 1889. *Bentham v. Hoyle* (supra). *Barnes v. Mid. Ry. Co.* Ir. L. R. 1 C. L. 130; *Huffam v. N. S. Ry. Co.* (1894) 2 Q. B. 321; *Partab Daji v. B. B. & C. I. Ry. Co.* 1 Bom. 52.

With him:—The words '*with him*' means on the passengers' person *Lentin v. B. B. & C. I. Ry.* (unreported) Times of India 23-4-03.

Travelling without having a proper pass or ticket:—(1) A person, who without the permission of a railway servant, enters any carriage for the purpose of travelling therein as a passenger, without having with him a ticket or a pass, is said to be travelling without a proper pass or ticket. (S. 68).

(2) In *Hart v. Buskin* 12 Cal. 192. Wilson J. was of opinion that "travelling without a ticket in S. 31 of Act IV of 1879 (corresponding with this section) must mean travelling without having taken a ticket." A passenger who has taken a pass or a ticket, but had lost the same during the journey, would be said to be travelling without a proper pass or ticket *with him*, *Partab Daji v. B. B. & C. I. Ry. Co.* 1 Bom. 52.

Refuses to present a ticket for examination:—(1) A passenger who has obtained a monthly ticket is liable to be called upon to produce it at any time on the journey which it covers, and if he does not so produce it is liable under Ss. 17 and 31 of Act IV of 1879 (corresponding with Ss. 66, 69 & 118 of this Act) to pay the fare for the journey between the stations for which his ticket was issued. The order under S. 31 (corresponding with this section) in case of his refusal to pay it, should be one merely for recovery of the amount due as his fare and not an order to pay such sum or any other sum as if it were a fine. A passenger who has such a ticket which is still in force and is in his possession, cannot be said to be travelling without a ticket within the meaning of S. 31 merely because he does not happen to have the ticket *with him* and therefore cannot produce it when called upon to do so. *Hart v. Buskin* and *Hart v. Thomas* 12 Cal. 192; In consequence of this decision the words "*with him*" have been inserted in this section.

(2) The provisions of this section apply only to the case of a person who has received a ticket and who will not or cannot produce it, and not to a person travelling without having paid for and obtained a ticket even though he may not have any intention to defraud. The company is not thereby prevented from treating him as a trespasser.

Though a fraudulent intention is an essential condition of travelling on a railway without payment of the fare being dealt with as an offence, the absence of such intention does not make the entry into the carriage without such payment less unlawful or of itself afford any ground for depriving the company of the right of putting an end to such unlawful occupation. *Partab Daji v. B. B. & C. I. Ry. Co.* (supra).

(3) A bye-law of a railway Co. required that "each passenger booking his place will be furnished with a ticket, which he is to show and deliver up when required to Guard &c." and "each passenger not producing or delivering up his ticket when required is subject to a penalty &c;" and it was held that under this bye-law annual season ticket-holders are bound to produce their tickets to the Railway servants as much as ordinary passengers. *Woodward v. Eastern Counties Ry. Co.* 30 L. J. M. C. 196, *Jennings v. G. N. Ry. Co.* L. R. 1 Q. B. 7=35 L. J. Q. B. 15. The same rule applies also to monthly season ticket-holders. *Hart v. Baskin* 12 Cal. 192; *Lentin v. B. B. & C. I. Ry.* (supra).

When removal of passenger from carriage justifiable-production of ticket:—A passenger travelling without having paid for and obtained a ticket, may be treated as a trespasser and a railway company would be justified in removing him from the train.

A railway company has the right, subject to the terms of any contract with the passenger, to assign the compartments or seats which passengers are to occupy and they may remove a passenger from a compartment or seat occupied by him without their assent. *Scott v. G. N. of Scotland Ry.* (1895) 22 Sc. Sess. Cas. 287. They may further remove from a train any passenger not entitled to travel by it with no more force than is needful. *McNeill v. N. B. Ry. Co.* (1902) 10 Sc. L. T. 348.

The conduct of the railway officials at the intermediate stations, if it amounted to leave and license to a passenger to travel in the train without a ticket, could only operate until the train arrived at the next station. *Partab Diji v. B. B. & C. I. Ry. Co.* (supra).—(Contra *Butler v. Man. Sheffield & Lancashire Ry. Co.* 21 Q. B. D. 207 wherein it was decided that a railway company is not justified in forcibly removing from a carriage a passenger who has taken a ticket but fails to produce it. *Dearden v. Townsend* 1 L. R. Q. B. 10; *G. N. Ry. Co. v. Harrison* 23 L. J. Exch. 308).

In *McCarthy v. Dublin W. W. Ry. Co.* Ir. 5 C. L. 244, it was decided that under a bye-law prohibiting a person from travelling without first paying his fare and obtaining a ticket, the company are justified in removing him from the carriage, though he offers to pay the fare. In *Scottish N. E. Ry. Co. v. Methews* 5 Irvine 237 it was held that if a person arrives at the station too late to take a ticket and gets into the train without one, the railway company are justified in refusing to allow him to remain although he tenders payment of the fare.

In *Menzies v. Highland Ry. Co.* 15 Scottish Law Reporter 608, where the passenger having a return ticket which he *bonafide* believed, entitled him to return on a particular day by a particular train, but which in point of fact did not, refused to leave the train and was ejected by the company's servants; Held that, a passenger with a ticket which does not entitle him to a seat in the carriage in which he is found may be treated as if he had no ticket at all and removed.

Arrest of passengers—liability for acts of servants—implied authority:—A servant of a Railway Co. has no implied authority to do an act which

the Co. itself has no power to do. *Poulton v. London & S. W. Ry. Co.* L. R. 2 Q. B. 534; *Goff v. Great Northern Ry.* 3 E. & E. 672.

The offence of travelling in a higher class with a ticket of a lower class, if with intent to avoid payment of the fare is punishable by fine only, although as a means of exacting the fine, there can be imprisonment in default. *Ormiston v. G. W. Ry. Co.* (1917) 1 K. B. 598.

There is no power to arrest for travelling without having previously paid the fare with intent to avoid payment thereof. The only power of arrest is to arrest a person for not having produced his ticket and refusing on request by an authority to give his name & address. It is for that and that alone that the companies are empowered to arrest passengers. The company only impliedly give authority to their servants to arrest passengers for not giving their name and address on the request of an officer or servant of the Ry. Co., after not producing a railway ticket nor paying their fare. That means that the company must be taken to have impliedly authorised their servants to arrest passengers upon an allegation by the servant that the passenger has refused to give his name and address upon request. It does not mean that the Ry. Co. only impliedly give their servants authority to arrest passengers when the allegation of the servant is true, so that the Ry. Co. would not be responsible if the arrest was not justified; but it means that the railway company only give the servant authority to act for them in determining whether a passenger shall be arrested, and to arrest him when the accusation against him is such as gives power to the Ry. Co. themselves to arrest. *Ormiston v. G. W. Ry. Co.* (1917) 1 K. B. 598 at p. 603.

When passenger cannot be detained:—If the name and address given are in fact correct there is no power to detain the passenger and it is immaterial that the company had reasonable and probable cause to suspect that the address was incorrect, *Knights v. London Chatham and Dover Ry. Co.* 62 L. J. Q. B. 378.

Producing an used ticket shows a guilty mind:—A passenger not at once telling a ticket collector that he had no ticket but instead, producing an used one shows a guilty mind and an intention to defraud. *Imp. v. Hirachond* (1896) Punj. C. C.

Buying unused ticket does not amount to an attempt to travel:—Buying an unused half of a return ticket does not in itself amount to an attempt to travel within the meaning of the Ind. Ry. Act. Rat's Un. Cr. C. 123.

Right to break journey:—A contract by a railway company to carry a passenger from one station to another, does not, in the absence of special terms, entitle the passenger to break the journey at any intermediate station. *Aston v. L. & Y. Ry. Co.* (1904) 2 K. B. 313; *Bastable v. Metcalfe* (1906) 2 K. B. 288.

Using ticket for any other station:—(1) The defendant took a tourist ticket to X costing 8 S.; he alighted at Y, a station short of X and to which

fare was 9 S.; his ticket contained a condition that if used for any other station it would be forfeited and the full fare charged. He did not give up his ticket at Y, but took another ticket for a station on the branch line:—Held that such a condition was valid and that the company was entitled to recover the full fare. *G. N. Ry. Co. v. Winder* (1892) 2 Q. B. 595; 61 L. J. Q. B. 603.

(2). The defendant took a special excursion ticket from A to B and back at a reduced fare. The ticket contained a condition that if used for any other station it would be forfeited and the full fare charged. The defendant travelled to and returned from C, a station beyond B, paying the ordinary fare for the journeys between B & C:—Held, that the condition was applicable to stations beyond that named on the ticket as well as to intermediate stations; that the defendant had used the ticket for a journey to a station other than that named on it and that the company were entitled to treat the ticket as forfeited. *G. N. Ry. Co. v. Palmer* (1895) 1 Q. B. 862; 64 L. J. Q. B. 316; 72 L. T. 287.

(3). A return ticket only entitles the passenger to travel to and from the stations named in the ticket; if the passenger goes beyond the stations named to another station, he must pay the additional fare, even though the price of a return ticket from the departure station to the further station be the same. *G. W. Ry. Co. v. Pocock* 41 L. T. 415; 28 W. R. 49 when a ticket is used for a station other than the one for which it was issued, such ticket contained a condition that if used for any other station it would be forfeited and the full fare charged. Such a ticket would not be a proper pass or ticket within the meaning of this section (*Ibid*).

(4). The defendant intending to travel by a particular train from H to M on the plaintiff's railway, took a ticket to S, an intermediate station, and after giving up his ticket on the arrival of the train at S, remained in the carriage and tendered to the plaintiff company 7 d., which was the amount of the fare from S to M:—The difference between the fare from H to S and the through fare from S to M being 9 d.:—The plaintiff refused the amount tendered, but allowed the defendant to travel on in the same train to M and then sued him for the excess through fare:—Held, that the plaintiff Co. were entitled to recover. *L. & N. W. Ry. Co. v. Hinchcliffe* (1903) 2 K. B. 32; 72 L. J. K. B. 530.

Demand must first be made for excess fare:—In order to entitle the railway company to take proceedings before a Magistrate under this section, a demand of the specific sum payable in respect of such fare must have been first made to the passenger who refused or was unable to produce his ticket. *Brown v. G. E. Ry. Co.* 2 Q. B. D. 406; 46 L. J. M. C. 231; Such an excess fare and penalty may be demanded at any time and a demand made more than five months after was held valid. *A. Grey v. Emp.* 26 P. R. 13. (Cr. appeal 98 of 1891).

S. 113 confers the power, to demand, only on railway servants duly appointed in that behalf, and no Court of Law can demand.

which has been actually made and not complied with. *B. N. Railway v. Devidutt* 9 Central P. L. R. 3 (Cr.)

Travelling in a higher class of carriage with lower class ticket:—

(1) A passenger travelling by railway in a carriage of a higher class than that for which he has paid his fare, is not guilty of cheating under S. 417 I. P. Code, but is indictable under the Railways Act. *Reg v. Dayabhai* 1 Bom. H. C. R. 140. And so where a passenger gave some part of his luggage to a co-passenger to evade the charge for over weight, the offence of cheating is not committed. *Parasram* (1903) P. R. 25.

(2) A passenger who, with a second or third class ticket, travels in a superior class with intent to defraud, is liable to be convicted under the Railways Act. *Gillingham v. Walker* 44 L. T. 715; 29 W. R. 896; *Bentham v. Hoyle* 3 Q. B. D. 289. *Barnes v. Mid. Ry. Co. Ir.* L. R. 1 C. L. 130. See also notes to S. 112.

Excess charge is not a fine:—That an excess charge though recoverable under the section as a fine is not a fine; that the demand prescribed by the section need not be made at once or within any particular limitation of time; that the railway servant appointed by the Railway Administration to make the demand need not have been so appointed when the passenger infringed the provisions of the section but that it is sufficient if he was duly appointed at the time of making the demand. *A. Grey v. Emp.* 26 P. R. 13 (Cri. Appea' 98 of 1891); *Queen-Emp. v. Kutrapa* 18 Bom. 440; *Emp. v. Subramaniya* 20 Mad. 385.

Failure or refusal to pay proper railway fare and excess charge under sec. 113 is not an offence and cannot be punished by a Magistrate whose functions are limited to the recovery of the same payable as if it were a fine *Queen Emp. v. N. G. Akyaw Swa* U. B. Cr. Rev. No. 1250 (1893); 1 U. B. R. 300.

Fare paid by the passenger:—"Paid his fare" means "paid his fare to the railway company" and that therefore a person who had purchased a work man's ticket, marked "not transferrable" which had been issued by a railway company to another person, from that person, and had travelled on the railway *without having purchased a ticket from the railway company* had travelled on the railway "without having previously paid his fare" and with intent to avoid payment within the meaning of the section. *Reynolds v. Beasley & Anr* (1919) 1 K. B. 215.

No imprisonment in default of payment of excess charge:—S. 113 (4) of the Indian Railways Act which directs that on failure to pay on demand excess charge and fare when due the amount shall on application be recovered by a Magistrate as if it were a fine, does not authorize the Magistrate to impose imprisonment in default. *Emp. v. Crowson* 1 Bom. L. R. 166 (*Emp. v. Kutrapa* 18 Bom. 440; *Emp. v. Subramaniya* 20 Mad. 315, *Emp. v. Rampal* 20 All. 95; *Emp. v. Allabux* 1 Sind 138; *Emp. v. Clair Miller* 1 Burma 606; *Emp. v. Hussena Din* Bom. Cr. R. 7 of 1889);—*Contra-Emp. v. Vaidyalingam* Bom. Cr. R. 43 of 1896.

An amount recoverable as a fine under this section (S. 113) can only be recovered by attachment and sale of movable property. *Emp. v. Balakhi* 5 N. L. R. 151, *Emp. v. Croisson* (Supra); 4 Ind. Cas. 236.

Imprisonment in default of payment of excess charge:—As S. 5, General Clauses Act declares the provisions of Ss. 63 to 70 I. P. Code applicable to all fines imposed under the authority of any Act thereafter to be passed unless such Act shall contain an express provision to the contrary, a Magistrate, ordering under S. 113, payment of excess charge and fare, can award imprisonment in default of payment of fine under S. 61 I. P. Code *Emp. v. Vaidyalisingam* Bom. Cr. R. 43 of 1896, *Contra Emp. v. Kutappa* 18 Bom. 440, and other cases cited above.

114. If a person sells or attempts to sell, or parts or attempts to part with the possession of any half of a return ticket in order to enable any other person to travel therewith, or purchases such half of a return ticket, he shall be punished with fine which may extend to fifty rupees, and, if the purchaser of such half of a return ticket travels or attempts to travel therewith, he shall be punished with an additional fine which may extend to the amount of the single fare for the journey authorized by the ticket.

Attempting to travel:—The act of buying an unused half return ticket does not in itself amount to an attempt to travel within the meaning of the Indian Railways Act. *Emp. v. Magan* Bom. Cr. R. 51 of 1877.

Sale or transfer of single ticket not prohibited:—Ss. 70 and 114 of the Ry. Act 1890, being applicable only to return and season tickets the sale or transfer of single tickets is neither prohibited nor rendered penal by the Act. *In Ramasawmy Naidu* Weirs Reports 872.

115. That portion of any fine imposed under section 112 or the last foregoing section which represents the single fare therein mentioned shall, as the fine is recovered, be paid to the railway administration before any portion of the fine is credited to the Government.

116. If a passenger wilfully alters or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible, he shall be punished with fine which may extend to fifty rupees.

117. (1) If a person suffering from an infectious or contagious

Being or suffering person to travel on railway with infectious or contagious disorder.

disorder enters or travels upon a railway in contravention of section 71, sub-section (2) he and any person having charge of him upon the railway when he so entered or travelled thereon, shall be punished with fine which may extend to twenty rupees, in

addition to the forfeiture of any fare which either of them may have paid, and of any pass or ticket which either of them may have obtained or purchased and may be removed from the railway by any railway servant.

(2) If any such railway servant as is referred to in section 71, sub-section (2) knowing that a person is suffering from any infectious or contagious disorder, wilfully permits the person to travel upon a railway without arranging for his separation from other passengers, he shall be punished with fine which may extend to one hundred rupees.

Diseases deemed to be "infectious or contagious disorders":—For the purposes of the Indian Railways Act, the following shall be deemed to be infectious or contagious disorder, namely:—(1) Bubonic fever, (2) Chicken Pox, (3) Cholera, (4) Diphtheria, (5) Leprosy, (6) Measles, (7) Mumps, (8) Scarlet fever, (9) Smallpox, (10) Typhus fever, (11) Typhoid fever, (12) Whooping cough—vide G. R. R. 7 Part II p. 185.

Passenger suffering from contagious disorder travelling without permission:—Where K knowing that he was suffering from *Cholera* travelled by a train, without informing the railway officers of his condition and M knowing K's condition purchased his ticket and travelled with him. It was held that K was properly convicted under S. 269 I. P. Code, because he must have known that he was doing an act likely to spread infection, and he did so negligently in not informing the railway authorities and that M was guilty of abetment of K's offence. *Krishnapa* 7 Mad. 276.

118. (1) If a passenger enters or leaves, or attempts to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform or other place appointed by the railway administration for passengers to enter or leave the carriage, or opens the side-door of any carriage while the train is in motion, he shall be punished with fine which may extend to twenty rupees.

Entering carriage in motion, or otherwise improperly travelling on a railway.

(2) If a passenger after being warned by a railway servant to desist, persists in travelling on the roof, steps or footboard of any carriage or on an engine, or in any other part of a train, not intend

for the use of passengers, he shall be punished with fine which may extend to fifty rupees and may be removed from the railway by any railway servant.

Whether travelling on foot-board of a carriage makes a person a passenger:—The word passenger is used in this section in a restricted sense and it denotes a person who without the permission of a railway servant enters any carriage of a railway for the purpose of travelling therein as a passenger. A licensed sweetmeat seller standing on foot board of a carriage in motion to receive his dues cannot therefore be held to be a passenger within the meaning of this section. *Emp. v. Ladda Ramji* 15 Bom. L. R. 996 *Abhu v. Bhiva Ruoji* (unreported) Bom. H. Ct. 29-8-1913; *Grand Trunk Ry. Co. of Canada v. Barnett* 130. L. T. 526; (1911) A.C. 361, *contra-Nur Mohamand v. King Emp.* 31 P. R. Cr. 1905 = 146 P. L. R. 1505.

If a person persists in riding on the foot-board after prohibition, he is liable to prosecution under cl. (2) of this section *In Re Munisami*, 1 Weir 875, dissented from, *Emp. v. Bulakhi* 5 N. L. R. 151.

No liability for injury to trespasser:—If a person gets on to the back step of the hindmost coach or a train in order to get a gratuitous ride having received no permission or license so to do from the Ry. officials, though to their knowledge he had done the same thing on other occasions the company is not liable if he gets injured, for the company owed him no duty. *Grand Trunk Ry. Co. of Canada v. Barnett* (Supra).

To enter or leave a moving car:—If a passenger chooses to attempt to enter or leave a moving car he does so at his own risk. It is not what a prudent or reasonable man should or would do and if he does it, and sustains injury while in the act of doing so, it would be an accident or a misfortune for which the company could in no event be held liable. *Temulji v. The Bombay Electric Supply & Tramway Co. Ltd.* 13 Bom. L. R. 345.

119. If a male person, knowing a carriage, compartment, room or other place to be reserved by a railway administration for the exclusive use of females, enters the place without lawful excuse, or, having entered it, remains therein after having been desired by any railway servant to leave it, he shall be punished with fine which may extend to one hundred rupees; in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Entering carriage or other place reserved for females.

A passenger entering compartment reserved for females on a lawful purpose commits no offence:—C entered a compartment of a railway carriage

reserved for females to assist his wife who was to travel in that compartment. A constable of the railway Police having interfered and some quarrel having ensued, C was charged and convicted of the offence under S. 332 I. P. Code. Held that the conviction was illegal. Entry into a compartment reserved for females without lawful excuse is forbidden but C had the best of all excuses for entering the carriage. The Constable acted *ultra vires* in interfering, as Railway Police are not allowed to do so until they are called upon by the Railway Authorities. *Chhajju-mal* 4 P. L. R. 405.

120. If a person in any railway carriage or upon any part of
Drunkenness or a railway,—
nuisance on a railway,

- (a) is in a state of intoxication, or
- (b) commits any nuisance or act of indecency, or uses obscene or abusive language, or
- (c) wilfully and without lawful excuse interferes with the comfort of any passenger or extinguishes any lamp,

he shall be punished with fine which may extend to fifty rupees in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Application of the Section:—The section applies to acts mentioned therein even if they are committed by railway servants. Thus where a Ry. guard removed two gorha ladies from a 1st class compartment in which they were entitled to travel and forced them to occupy another compartment. Held that he was guilty of an offence under Sec. 120 of Railways Act. *Cuffly v. Mahamadali* 19 Cr. L. J. 313; 44 Ind. Cas. 329.

Meaning of person:—The word "person" in this section includes Ry. officials *Cuffly v. Muhamadali* 19 Cr. L. J. 313; 44 Ind. Cas. 329. The section applies to acts mentioned therein even if they are committed by railway servants. Using delivery shed as a market place in an offence. *Deoki v. Emp.* (1921) 62 Ind. Cas. 876.

Accident to passenger due to intoxication:—A railway company is not liable in damages for failing to see an intoxicated passenger safely off the platform at which he arrives. *Mc Cormick v. Caledonian Ry* 6 F. 362—C. T. of Sess. See also *Adderley v. G. N. Ry.* (1905) 2—I. L. R. 378 at p. 166.

Nuisance:—Delivery Shed and its court yard are not prepared for the purpose of a fish market and if any body sells or persists in selling fish there is guilty of committing a nuisance under Sec. 120 (b). *Deoki v. Emp.* (1921). 33 Cal. L. J. 293.

Rule 40 (P. II) Duties of Station Masters in case of drunkenness or nuisance:—The Station Master must use all reasonable means to stop any annoyance that may be caused by any act referred to in s. 120 of the Indian Railways Act 1890, and if any person is removed from the railway under that section, shall, if necessary, direct steps to be taken for his prosecution thereunder.

Rule 41 (P. II) Smoking or having open light or fire on railway premises or keeping open light or lighted lamp in carriage:—Any person who

(a) is found smoking, or having an open light or fire, in a goods shed or a store yard, or

(b) persists in keeping an open light or a lighted mineral oil lamp in a carriage after being warned by a railway servant or a police officer to desist, or

(c) persists in smoking on any other portion of the railway premises after being warned by a railway servant or a police officer to desist,

shall, if the act is deemed by the authorised officer to be dangerous, immediately be removed from the railway premises.

Rule 42 (P. II) Exclusion of persons from railway premises:—A Railway Administration may exclude from the station platform, or any part of the railway premises, any person not being a *bona fide* passenger, nor having business on the railway premises.

If a passenger obstructs the lawful entry of another passenger, he may be liable to be removed from the train under S. 120 (c), 26 P. R. 1910 Cr.

Ejection of passengers:—There is no provision in the Railways Act for ejecting passengers except in certain circumstances such for instances as are specified in Sec. 120; S. 122 of the Railways Act is not applicable, *Mahammed v. A. W. Farley and our* 25 Cal. L. J. 610; 44 Cal. 279.

Release of a convicted person with a warning:—The accused was found drunk on a railway station which was an offence under S. 120 (a) of the Railways Act. He pleaded guilty and the magistrate let him off with a warning. Held that S. 95 of the I. P. C. was inapplicable in this case in as much as the act charged amounted to an offence under S. 120 (a) of the Railways Act; S. 562 of the Cr. Pro. Code applies only where a person is convicted of one of certain offences punishable under the Penal Code and not to an offence under the Railways Act. *Emperor v. John Scott* 1. N. L. R. 139.

121. If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with fine which may extend to one hundred rupees.

Obstructing railway servant in his duty.

Summary trial:—(1) An offence under S. 121 is summarily triable within the meaning of S. 260, Cr. Pro. Code Act V of 1898. *King Emp. v. Bindu Prasad A. W. N.* 24 (1902).

2 Whether a case is triable summarily or not must be determined by the complaint, not by an estimate formed by the Magistrate (e.g. of the worth of the property which the accused is charged with having stolen) after evidence has been recorded; and such estimate cannot retrospectively warrant a mode of trial which was originally illegal. *Ramchander Chatterji v. Kanje Lal* 25 W. R. Cr. 19. Whether a case is to be tried summarily or not must be determined by the offence complained of and not by the offence proved.—Sohoni Cr. Pro. page 639, 9th Ed.

Impeding a railway servant in the discharge of his duty:—Before a person can be convicted of wilfully obstructing or impeding a railway servant in the discharge of his duties, as provided in S. 121 or of voluntarily obstructing a public servant in the discharge of his public functions as provided in S. 186 I. P. Code it must be shown that the obstruction or resistance was offered to a Railway or Public servant in the discharge of his duties or public functions as authorised by law. The mere fact of a Public servant or Railway servant believing that he was acting in the discharge of his duties will not be sufficient to make resistance or obstruction to him amount to an offence under those sections. In *Re Baroda Kant Pramanick and Shikada* 1 Cal. W. N. 74.

Obstruction to signaller doing duties of ticket collector under orders of station master is an offence:—Rules 244, 229 and 231 of the General Rules made by the Railway Board acting under the Indian Railway Board Act (IV of 1905) empower a station master to appoint a signaller temporarily to do the duties of a ticket collector; and when the signaller so appointed undertakes such duties and acts in the discharge thereof he is a "railway servant acting in the discharge of his duty" within the meaning of that expression in s. 121 of the Indian Railways Act and obstruction to him is punishable under that section. *Chitrala Bhimauna & others* Petitioners (1919) 37 Mad. L. J. 656=(1920) 34 Mad. 348.

Obstructing a right of way:—The accused obstructed the Resident Engineer of a Railway Company, (who was acting under orders from the company) in putting down a line for a fence which would have interfered with the right of way claimed by the accused and was convicted by a District Magistrate with obstructing a railway servant in execution of his duty under S. 121. Held, that the legality of the conviction depended on the validity of the accused's claim to the right of way. For if that claim was valid, it could not have been the duty of the Resident Engineer to obstruct it and the Railway Company could not by their orders make it his duty to do so. *Queen Empress v. Bamonjee* Bom. Cr. R. 41 of 1893.

122. (1) If a person unlawfully enters upon a railway, he shall be punished with fine which may extend to twenty rupees.

Trespass and refusal to desist from trespass

(2). If a person so entering refuses to leave the railway on being

requested to do so by any railway servant, or by any other person on behalf of the railway administration, he shall be punished with fine which may extend to fifty rupees, and may be removed from the railway by such servant or other person.

Application of the section:—If the original entry is lawful, a subsequent refusal to leave on being requested to do so would not make the original entry unlawful or bring it under cl. 2 of Sec. 122 of the Rys. Act, which is but an aggravated form of the offence under clause (1). *Durrell v. Kinnud Kant Chakrabarty* Cal. W. N. 575; 19 Cr. L. J. 878; 47 Ind. Cas. 74. *Bashir Ahmad v. Emp.* 20 Cr. L. J. 96; 15 N. L. R. 34; 48 Ind. Cas. 896. Sub sec. (1) s. 122 makes an unlawful entry punishable and sub sec. (2) provides for cases where the original entry is lawful as well as unlawful. *Bashir Ahmad v. Emp.* 20 Cr. L. J. 96; 48 Ind. Cas. 896.

Unlawfully:—The word "unlawfully" seem to mean without the leave of the railway administration. *Emp. v. Hussein* 30 Bom. 348 at p. 354; *Mohan Mulik v. Emp.* 49 P. R. 1914; 155 P. L. R. 1914.

An entry upon railway premises not in exercise of a right or by permission of the railway administration would be unlawful. *Emp. v. Vannali* 22 Bom. 526.

A person may be guilty of unlawfully entering upon a railway within the meaning of Section 122 of the Railways Act notwithstanding that no rule has been framed under Section 47 (1) (g) making such an act an offence.

That no rule properly made under S. 47. Cl. 1 (g) would have reference to trespass by a member of the general public upon a Railway line as contemplated S. 122. (30 Bom. 348 approved). *Mohan Mulik v. Crown* 49 P. R. (1914) 4.

Railway:—The term "Railway" exclude a railway carriage. The term railway stock includes it *Mahomed Hussien v. A. W. Farley & others* 25 Cal. J. 610; 44 Cal. 279.

Railway carriage-public place:—A railway carriage forming part of a rough special train is not a public place under Section 12 of Act IV of 1887.

Jenkins C. J.:—"The word 'place' is, I think, qualified by the word 'public' having regard to the context, it must, in my opinion, mean a place of the same general character as a road or thoroughfare.....I am unable to regard the railway carriage in which the accused were, as possessing such characteristics of bearing such a general resemblance to a street or thoroughfare as to justify in holding that it was a public place within the meaning of S. 12 of the Act of 1887) with which alone we are concerned."

Per Russell J.:—"It is clear that the railway line certainly cannot be described as 'public street or thoroughfare', in as much as it is not and cannot be used by the public in the same way as they are in the habit of using 'public streets' or 'thoroughfares', *Emp. v. Hussein* 30 Bom. 348.

Goods yard is a public place, *Cowajee v. G. I. P. Ry. Co.* 26 Bom. 609; at p. 613; Compare the case of *Exparte Kippins* (1897) 1 Q. B. 1; but a railway station and platform at a time when no train was due except a goods train is not a public place. *Emp. v. Madan Mohan* 3 All. W. N. 197. Staff quarters are not part of railway. *Margam Aiyar v. Mercer* (1914) Mad. W. N. 124; 15 Lawyer 579. A railway station waiting room is a building *King-Emp v. Raval Megha* 22 K. L. R. 338.

Entry on platform without ticket—whether lawful:—In the absence of any rule or bye-law, entering without a ticket on a railway platform, is not unlawful within the meaning of this Section. Rule 42 in Chapter IV Part II of G. R. R. made under Sec. 47 assuming it within the powers conferred by Sec. 47 Cl. 1 (b) while empowering the railway administration to exclude certain persons not *bona fide* passengers from railway premises, does not render the entry of such persons unlawful under Sec. 47 (2). *Shamo i Sindh*. 91; *Ram Narain v. Empress Punj.* C. C. 1893; *Emp. v. Rama & others* 35 All. 136; *Bashir Ahmed v. Emp.* 13 Nag. L. R. 34.

Order forbidding persons to enter railway premises except for travelling is illegal:—The public have a right to enter upon railway premises for many purposes other than travelling and an order forbidding persons to enter a railway station except for bona fide purpose of travelling would be an illegal order. *Emp. v. Rama & others* 35 All. 136.

Exclusion of persons from railway premises:—(1) A Railway Administration may exclude from the station platform, or any part of the railway premises, any person not being a *bona fide* passenger, not having business on the railway premises. (Rule 42 Chap. IV Part II G. R. R. *Emp. v. Vannali* 22 Bom. 525 and *Cowaji Merwanji v. G. I. P. Ry. Co.* 26 Bom. 609 indicate that Railway Companies have a right to exclude the public from railway premises. The existence of the above rule justifies exclusion even if it were held that the station platform is not private property.

Right of Railway Administration to exclude persons from platform:—The resolution of the Govt. of India published at pp 18, 19 of the supplement to the Gazette of India 1884 does not constitute a rule under the Ry. Act; consequently its publication under the New Railways Act is not necessary to give it validity. The resolution merely provides the conditions under which Railway Authorities may exclude all but ticket holders from the railway platforms. *The right of exclusion by the railway companies exists independently of this resolution.* Railway companies have the right to exclude from Railway premises or platforms all persons excepting those using or desirous of using the railway and may impose upon the rest of the public any terms they think proper as the conditions of admittance. *E. I. Ry. Co. v. Lala Moti Sagar* 6 P. W. R. 351, 12; Lawyer 781.

The jurisdiction to determine whether there is a statutory right to demand from a railway company a facility or privilege belongs exclusively to the Railway Commissioners. *Perth General Station Committee v. Ross* H. L. (1897) A. C. 479.

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In this case Lord Halsbury L. C. was of opinion that "the station is absolutely the property of the railway company, and that the right of the railway company are just as absolute in the first instance as those of any other proprietor. That against their will any member of the public has a right to force himself upon the platform or into the booking office I cannot agree."

"The public has a right to go and has a right to enter into a contract with them; and the Railway Co., may be compelled if they refuse, either by action at the suit of the complaining party, or by an application to the Railway Commissioners, but I should be sorry to throw any doubt on the absolute right of the Railway Co. in the first instance to regulate their own traffic in their own way, and to refuse access to their station under the circumstances stated above."

Trespassers not entitled to damages:—A man trespasses at his own risk. Therefore a plaintiff being a trespasser on the foot board of a train on which he was standing and on deft's premises wherein he sustained injuries, is not entitled to recover damages, there being no duty on the part of the railway towards the trespasser. *Grand Trunk Ry. Co. of Canada v. Barnett* (1911) A.C. 361; 130 L.T. 526, because such a person is not a *passenger*. *Emp. v. Ladha* 15 Bom. L. R. 996.

Entry lawful:—The owners of the dominant tenement have a right to enter on the premises of a railway company, the owners of the servient tenement, to effect any necessary repairs and that the entry if made in the exercise of a right could not be called unlawful. *Imp. v. Vannali* 22 Bom. 525. *Emp. v. Baroda Kant* 1 Cal. W. N. 74; *G. I. P. Ry. v. The Municipal Corporation of Bombay* 23 Bom. 358. In *Ramnarain v. Emp.* Punj. C. C. 1893, the accused, who had legitimate business at the goods shed, attempted to get there by crossing the line in spite of a prohibition by a railway servant. Held, that he could not be convicted as the entry was lawful.

What is business:—The desire of a person to see his friend off does not constitute *business* within the terms of this rule. (Rule 42 Chap. IV Part II G. R. R.) especially where his presence is unnecessary so far as his friend's departure is concerned and his friend does not require any assistance from him. *E. I. Ry. v. Lala Moti Sagar* 6 P. W. R. 251; 42 Lawyer 781.

Affray on railway platform:—The accused were convicted of committing an affray under S. 160, Ind. Penal Code. The scene of the affray was a railway station platform at a time when no train was due except a goods train. Held, that as "public peace" had not been disturbed within the meaning of this section, the conviction could not be sustained. *Emp. v. Madan Mohan & another* 3 All. W. N. 197

Forcible removal of passenger from a reserved compartment by servant acting outside the scope of his authority-railway not liable:—In *Mathuradas v. Secy. of State* 5 S. L. R. 141, the plaintiff who was travelling in a compartment reserved for Europeans was forcibly ejected and he sued the Secy of State for damages. The Court held that the Ry. Act confers powers to eject

passengers in certain cases, but gives no such powers in the cases dealt with in S. 109 (1); therefore the servant ejecting had acted beyond his power and the Secty of State was not liable in damages.

There is no common law right to inflict blows on a man with fists if he refuses to move, *Mahomed Hussein v. A. W. Farley & others* 25 Cal. L. J. 610.

123. If a driver or conductor of a tramcar, omnibus, carriage or other vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police-officer, he shall be punished with fine which may extend to twenty rupees.

Disobedience of omnibus drivers to directions of railway servants.

This Section is adapted from S. 16 of the Railway Regulation Act, 1840 (3 & 4 Vict. C. 97), and the English bye-law No. 17.

Refusal to leave railway premises by a cab-driver, &c.—A cab-driver who refuses to leave the railway company's premises when requested to do so by a railway servant on behalf of the company, under S. 16 of the Railway Regulation Act, 1840 ("If any person shall willfully trespass upon any railway or any of the stations or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer or Agent of the said company"), may be convicted of wilful trespass, although he thinks that he is entitled to remain because other drivers are allowed to put their cabs upon the stand, pursuant to certain terms which he has not complied with. If there is a bonafide claim of a right, which, upon the evidence adduced, could exist at law, the magistrate should dismiss the charge. *Foulter v. Steadman* L. R. 8 Q. B. 65; *Hole v. Digby* 27. W. R. 884; *Wilkinson v. Goffin* 33 L. T. 824.

Right of railway servants to remove trespasser by force from station.—When a cab man in a railway station has concluded the business which brought him there and refuses to leave and persists in refusing to leave, he becomes a trespasser and the railway servants are at common law entitled to remove him by force if necessary *Wood v. North British Ry.* 2 F. L.-Ct. of Sess.

124. In either of the following cases, namely:—

(a) If a person knowing or having reason to believe that an engine or train is approaching along a railway, opens any gate set up on either side of the railway across a road, or passes or attempts to pass, or drives or takes or attempts to drive or take, any animal, vehicle or other thing across the railway,

Opening or not properly shutting gates.

- (b) if, in the absence of a gate-keeper, a person omits to shut and fasten such a gate as aforesaid as soon as he and any animal, vehicle or other thing under his charge have passed through the gate,

the person shall be punished with fine which may extend to fifty rupees.

This section is adapted from S. 75 of the Railway Clauses Act, 1845 (8 Vict. c. 20).

125. (1) The owner or person in charge of any cattle straying on a railway provided with fences suitable for the exclusion of cattle shall be punished with fine which may extend to five rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle-trespass Act, 1871.

Cattle-trespass.

I of 1871.

(2) If any cattle are wilfully driven, or knowingly permitted to be, on any railway otherwise than for the purpose of lawfully crossing the railway or for any other lawful purpose, the person in charge of the cattle or, at the option of the railway administration, the owner of the cattle shall be punished with fine which may extend to ten rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle-trespass Act, 1871.

I of 1871.

(3) Any fine imposed under this section may, if the Court so directs, be recovered in manner provided by section 25 of the Cattle-trespass Act, 1871.

I of 1871.

(4) The expression "public road" in sections 11 and 26 of the Cattle-trespass Act, 1871, shall be deemed to include a railway, and any railway servant may exercise the powers conferred on officers of police by the former of those sections.

I of 1871.

(5) The word "cattle" has the same meaning in this section as in the Cattle-trespass Act, 1871.

I of 1871.

The Cattle Trespass Act, I of 1871:—

S. 3. "Cattle" includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.

S. 11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage works, embankments and the like, and officers of police, may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage works, embankments and the like, or the sides or slopes of such roads, canals, drainage works or embankments or found straying thereon.

and shall send them or cause them to be sent within twenty-four hours to the nearest pound.

NOTES—I. The accused forcibly opposed the seizure of their cattle by village officers who found them grazing in a reserved forest. They were acquitted on the ground that there was no trespass as the cattle had not gone into the reserved forest of themselves, but had been driven into it by the accused. On appeal against acquittal, held that under S. 69 of Act VII of 1878, and under this section, the cattle were liable to seizure. *Ratanlal 602.*

2. This section having been applied to forests by S. 69 of the Indian Forests Act, VII of 1879, the seizure by a Forest officer of cattle found straying in a reserved forest is legal, even if no damage has been actually done. *Queen Emp. v. Babaji 22 Bom. 933.*

3. Power of P. W. D. Officer to seize cattle. Cattle are not liable to seizure by the Officers of the Public Works Department unless they were trespassing on public property in charge of the officers of the Department. Where therefore the Magistrate had not decided whether the land on which the cattle were seized was public property and in charge of the Public Works Department, the conviction was quashed and the case directed to be re-tried. *Queen Emp. v. Lakshmanua 24 Mad. 318.*

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine in accordance with the scale for the time being prescribed by the Local Govt. in this behalf by notification in official Gazette. Different scales may be prescribed for different local areas.

Fines for cattle impounded.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Govt. may direct. A list of the fines & of the rates of charge for feeding and watering cattle shall be posted in a conspicuous place on or near to every pound. (substituted by Act XVII of 1921).

NOTES:—(1). Fine levied under this section does not exempt the owner from punishment. A fine levied by a pound-keeper is not a punishment or conviction for an offence and it is an error to hold that a person cannot be tried for an offence of having contravened the Municipal Rules by allowing his cattle to stray because he has paid a fine under this section. *Umaisingji v. Collector of Thana 7 B. H. C. R. Cr. Ca. 55.*

(2). Areas within which fines at double rates are leviable:—On every head of cattle which may be seized and impounded, fine at double the rates specified in this section shall be levied in (a) portions of the Nilgiri District. (Fort St. George Gazette, 1897, Pt. I., p. 1077), (b) The cantonment of Wellington (Fort St. George Gazette, 1899, Pt. I., p. 1110); (c) Wynand Taluk, Malabar District (Fort St. George Gazette 1891 Pt. I., p. 814); (d) The area comprised within a radius of 3 miles from the Emerald Valley (Fort St. George Gazette, 1903, Pt. I., p. 767); (e) The cantonment of St. Thomas Mount (Fort St. George Gazette, 1903, Pt. I., p. 1065).

S. 25. Any fine imposed (under the next following section or) for the offence of mischief by causing cattle to trespass on any land, may be recovered by sale of all or any of the cattle by which the trespass was committed whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Recovery of penalty for mischief committed by causing cattle to trespass.
S. 26. Any owner or keeper of pigs who, through neglect or otherwise damages, or causes or permits to be damaged, any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate be punished with fine not exceeding ten rupees.

Penalty for damages caused to land or crops or public roads by pigs.
The Local Government by notification in the official Gazette, may from time to time with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally or to cattle of a kind described in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees" or as if there were both such reference and such substitution.

The Local Government may at any time, by notification in the Official Gazette cancel or vary a notification under this section.

Notes:—(1). Before any person can be convicted under this section, the prosecution must establish that the owner has, through neglect or otherwise, damaged or caused or permitted to be damaged land, &c., by allowing his cattle to trespass thereon. A personal neglect on the part of the owner and his allowing his cattle to trespass must, they cannot be inferred from the circumstances of the case, be shown, affirmatively to exist.—Ratanlal 867.

(2). Where a Magistrate passed the maximum sentence in the absence of clear evidence of damage, the High Court reduced the sentence. *Queen Emp. v. Savlyaram* 2 Bom. L. R. 335.

(3). Proof of intention or knowledge necessary:—In the case of other animals there must be an intention to cause damage or a knowledge that accused admitted

that he was the owner of a buffalo and that it had done damage to complainant's property, but when intention or knowledge on the part of the owner was neither charged nor proved, the conviction and sentence were reversed.—Ratanlal 60.

N. B.:—It will be observed that this ruling will be applicable until the Local Government have published the notification referred to in clause 2 of this section. When such notification is published, an intention to cause damage will not have to be proved, i.e., other cattle will be equal to pigs.

(4). **EXTENSION OF THE SECTION**—The section shall be read as if it had reference to cattle generally instead of 'pigs' only and as if the words "fifty rupees" were substituted for the words "ten rupees" in the following areas in the Madras Presidency:—(a) portion of the Nilgiri District (Fort St. George Gazette, 1897 Pt. I, p. 1077); (b) The Wynaad Taluk, Malabar District (G. Gazette, 1891, Pt. I, p. 884; and 1898, Pt. I, p. 171); (c) Kadaikamal (G. Gazette, 1894, Pt. I, p. 1224); (d) Deputy Tahsildar's Division of Vercand, Salem District (G. Gazette, 1894, Pt. I, p. 128); (e) certain Padugais, in the Salem District (G. Gazette, 1899, Pt. I, p. 288).

Scope of clause I:—"S. 125, Cl. (1) of the Railway Act, makes punishable the negligence of the owner or person in charge of any cattle which stray upon the line. The section recognizes the obligation of the owner to prevent the cattle from straying, while at the same time it provides that the negligence of the person in charge may be punished. There is nothing in the clause to restrict the discretion of the court in ascertaining upon whom the fault really lies and awarding the punishment accordingly." *Queen Emp. v. Andi* 18 Mad. 228.

Scope of clause II:—"The second clause of this section makes punishable wilful acts of driving or knowingly permitting cattle to be upon a railway line, and provides that, at the option of the railway administration, the owner, instead of the person in charge shall be punishable. This provision is of a very penal character, and it removes the discretion as to the person to be held liable to punishment from the court to the railway authorities. No such discretion is given to the railway administration when the straying of the cattle has been through negligence. There is nothing to restrict the power and duty of the magistrate to ascertain in such cases whether the person charged has himself been guilty." *Queen Emp. v. Andi* 18 Mad. 228 at p. 229.

Liability to fence:—See *Henry Conder v. Balaprasad* and other cases in notes to S. 13.

Owner not liable for cattle left in charge of keeper who allowed to stray them on a railway line:—The owner of cattle which have been allowed to stray upon a Railway in consequence of the negligence of the person actually in charge of them on the owner's behalf is not liable to punishment under this section (*Queen v. Andi* 18 Mad. 228 followed) *King Emp. v. Gurprasadgir* 8 All. L. J. 1249; = 34 All. 91.

Fences suitable for the exclusion of cattle:—On the 10th April 1871 the prisoner's cow strayed on a railway provided with a fence; on the 13th J.

following, Government published rules determining what kind of fences should be deemed to be suitable for the exclusion of cattle. On the date of the offence there were no such rules. No evidence was offered of the state of the fence and the prisoner was convicted solely on his admission that he was the owner of the cow; Held that, the state of the fences required specific proof, in the absence of which the conviction could not be sustained. *Anonymous* 3 Mad. H. C. R. Ap. 1.; *Queen Emp. v. Andi* (supra).

126. If a person unlawfully—

Maliciously wreck-
ing or attempting to
wreck a train.

- (a) puts or throws upon or across any railway any wood, stone or other matter or thing, or
- (b) takes up, removes, loosens or displaces any rail, sleeper or other matter or thing belonging to any railway, or
- (c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway, or
- (d) makes or shows, or hides or removes any signal or light upon or near to any railway, or
- (e) does or causes to be done or attempts to do any other act or thing in relation to any railway,

with intent, or with knowledge that he is likely, to endanger the safety of any person travelling or being upon the railway, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

Unlawfully:—See Sec. 122, p. 382.

By whom triable:—Offences under this section are triable exclusively by a Court of Sessions or by a Magistrate specially empowered. *Maglia* 14 C. P. 176; *Queen Emp. v. Nga Po Swa* 1 U. B. R. 302.

Derailment of train—onus:—The Respondent was injured by reason of a train of the appellants in which he was a passenger leaving the line and being wrecked. The immediate cause of the accident was the removal of a rail which the appellants pleaded had been effected maliciously by some person for whom they were not responsible. In such a case the onus of proof that the respondents' injuries were not due to the appellants' negligence was upon the appellants. *E. I. Ry. v. Kirkwood* 48 Cal. 757.

Failing to remove a stone from a rail is not negligence:—A person who fails to remove a stone from a rail is not guilty of negligently doing an act which is likely to endanger the safety of persons travelling upon the railway under S. 46 of Act IV of 1879, (corresponding with this section) unless it be proved that he was legally bound to remove. *Queen v. Phakira* Bom. Cr. R. 50 of 1888.

Placing obstruction on rails:—(1) The accused was charged under s. 46 of Act IV of 1879 (corresponding with this section) with pulling up an iron mile post and placing it across the rails. It was done in the dusk and the mail train might have been derailed. The District Magistrate was of opinion that S. 45 of the Act applied and referred the case to the High Court. Held that, the trying magistrate did not give sufficient consideration to the principle that when an act unlawful in itself is wilfully done, rashness cannot be usually predicated. *Emp. v. Shivappa* Bom. Cr. R. 14 of 1889; *Queen v. Damodarum* 12 Mad. 26.

(2). A person charged with having placed a stone on the rails under this section cannot be allowed to plead that no train was due at the time; that the principle of the decision of *Queen Empress v. Hormusjee* 19 Bom. 715 applied. *Queen Empress v. Keshow* Bom. Cr. R. 72 of 1895. *Reg. v. Jora Hasji* 11 Bom. H. C. 244 and *Queen v. Nana* 14 Bom. 260.

Throwing stones at engines or carriages:—A person throwing a stone at an engine or carriage using a railway might be indicted for doing an act to endanger the safety of persons conveyed on the railway. *Reg. v. Bowray* 10 Jur. 211.

To constitute an offence, it was necessary that the stone or other thing used should be thrown against and strike an engine, tender, carriage or truck, having a person or persons in or upon it; and therefore, although a stone may be thrown at a train with intent to injure persons being therein, yet, if it strikes a carriage or tender not having any person in or upon it at the time, the offence is not proved, *Reg. v. Court* 6 Cox C. C. 202; *Reg. v. Rooke* 1 F. & F. 107; *Reg. v. Sanderson* 1 F. & F. 37.

Turning the hour-table is an offence:—Where the accused unlocked and turned the hour table at a railway station. Held that the accused was guilty of an offence under Sec. 126, although, in the circumstances of the case, there was little likelihood of injury being caused by him, no engines being on either side of the line just then. *Re Munisami* 1 Weir 875.

Obstruction:—(1) A man in the night time unlawfully altered the position of two arms of a semaphore signal at a railway station so as to change the signal from "all clear" to "danger" and "caution" respectively. He also altered the colour of two distant signals on the line from white to red, thereby changing the signal from "clear" to "danger." The alteration caused a train, which would have passed the station without slackening speed, to come nearly to a stand; another train going in the same direction, and on the same rails, was due at the station in half an hour; held that he had obstructed a train. *Reg. v. Joseph Hadfield* 39 L. J. M. C. 131; L. R. 1 C. C. 253.

(2) A man, who was not a servant of a railway company stood on a railway between the two lines of rails at a point between two stations. As a train was approaching he held up his arms in the mode used by inspectors of the line when desirous of stopping a train. This, as he intended that it should, caused the

to shut off steam and diminish the speed, and led to a delay of four minutes:—Held that this amounted to an obstruction. *Reg. v. Hardy* 40 L. J. M. C. 62; L. R. 1 C. C. 278.

(3) A party was liable to be indicted if he designedly placed on a railway substances having a tendency to produce obstruction to the carriages, though he might not have done the act expressly with that object *Reg. v. Holroyd* 2 M. & Rob. 339.

(4) A man placed a stone upon a line of railway, so as to cause an obstruction to any carriages that might be travelling thereon. Held, that if this was done mischievously and with an intention to obstruct the carriages of the company he was liable. *Reg. v. Upton* 5 Cox. C. C. 298; *O'Gorman v. Sweet* 51 J. P. 663. *Crown v. Jivram* 23 K. L. R. 69.

Abetment of offence—Removing rails:—To remove rails unlawfully is an offence falling under S. 126 and therefore where the accused had been found guilty of unlawfully removing rails with the result that an engine and tender were overturned and a van smashed, it was held that he was rightly convicted of an offence under S. 126 (b) of the Railway Act, *Maru Dai Muthu & others v. Emp.* Mad. High Court, June 1892. And the fact that the accused knew of the plot to remove the rails and that he kept watch while the act was being done. Held that the action of the accused amounted to an abetment of the offence mentioned in this section, *Empress v. Kalia* 1 Bom. L. R. 682.

127. If a person unlawfully throws or causes to fall or strike at, against, into or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

Malevolently hurting or attempting to hurt persons travelling by railway.

By whom triable:—Offences under this section are triable exclusively by a Court of Sessions or by a Magistrate specially empowered. *Maglia* 14 C. P. 176.

Whipping:—If the accused when convicted under this section (S. 127) is of 13 or 15 years of age, he cannot be punished with whipping. *Emp. v. Ragia & others* 11 C. P. L. R. 8 (Cr.)

128. If a person, by any unlawful act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling-stock upon any

Endangering safety of persons travelling by railway by wilful act or omission.

railway, he shall be punished with imprisonment for a term which may extend to two years.

Obstruction:—The accused in the night time altered the position of two arms of a semaphore signal on a railway station, in order to change the signal from "all clear" to "danger" and "caution" respectively, and also altered the colour of two distant signals on the line from "white" to "red" and thereby changing the signal from "clear" to "danger". The alteration caused a train, which would have passed the station without slackening speed to slacken speed and to come nearly to a stand. Held, that this was obstruction within the meaning of the section. *Kelly C. B. said*. "There was as much an obstruction as if a log of wood had been placed across the rails". *Reg v. Joseph Hadfield* L. R. 1. C. C. 253; 39 L. J. M. C. 131.

A person improperly went on a line of railway and purposely attempted to stop a train by standing between the two lines of rails and holding up his arms in the mode adopted by Inspector of the line when desirous of stopping a train. The driver was thereupon induced to diminish the speed. This was held to be an obstruction. *Reg. v. Hardy*; 40 L. J. M. C. 62. See also notes to S. 126.

Placing obstruction on rails:—See *Emp. v. Shivappa* Bom. Cr. R. 14 of 1889 and *Queen v. Damodarum* 12 Mad. 26.

Endangering lives of passengers by negligence.—The prisoner, a servant of a railway company, was convicted under S. 29 (Act XXV of 1871) of endangering the lives of the persons in a certain train by negligence. There was no evidence that the safety of any persons in any train had been endangered by his neglect of duty. On the contrary by reason of precautions taken by other persons any possible danger which might have resulted from his neglect was avoided. Held, that he could not be convicted and punished under Sec. 29 of Act XXV of 1871. *Queen v. Manphool* 5 N. W. P. 940.

129. If a person rashly or negligently does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon a railway, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Endangering safety of persons travelling by railway by rash or negligent act or omission.

Legally bound to do:—A person is said to be legally bound to do, whatever it is illegal in him to omit. (S. 43 I. P. Code); Rat. un. Cr. C. 394.

Act or Omission:—The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission. (S. 33 I. P. Code).

Rash or negligent Act:—A rash act is primarily an over-hasty act and thus opposed to a deliberate act, but it includes an act which, though it

be said to be deliberate, is yet done without due deliberation and caution. *Nga Myat Thin* (1898) P. J. L. B. 426.

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do or the doing something which a prudent and reasonable man would not do. *Blyth v. Birmingham Waterworks Co.* 25 L. J. Ex. 212; *Negligence* is not an affirmative word; it is a negative word; it is the absence of such care, skill, and diligence, as it was the duty of the person to bring to the performance of the work which he is said not to have performed. *Grill v. General Iron Screw Collier Co.* 35 L. J. C. P. 321, 330; *Vaughan v. Taff Vale Ry. Co.* 5 H. & N. 679; *Philadelphia Ry. Co. v. Spereen* 47 Penn. St. 300. See also S. 72 at p. 219.

130. (1) If a minor under the age of twelve years is with respect to any railway guilty of any of the acts or omissions mentioned or referred to in any of the four last foregoing sections, he shall be deemed, notwithstanding anything in section 82 or section 83 of the Indian Penal Code, to have committed an offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male, shall be punished with whipping, or may require that father or guardian of the minor to execute, within such time as the Court may fix, a bond binding himself, in such penalty as the Court directs, to prevent the minor from being again guilty of any of those acts or omissions,

Special provision with respect to the commission by children of acts endangering safety of persons travelling by railway.

XLV of 1860.

(2) The amount of the bond, if forfeited, shall be recoverable by the Court as if it were a fine imposed by itself.

(3) If a father or guardian fails to execute a bond under subsection (1) within the time fixed by the Court, he shall be punished with fine which may extend to fifty rupees.

S. 82 (I. P. Code) Nothing is an offence which is done by a child under seven years of age.

S. 83. Nothing is an offence which is done by a child above seven years of age and under twelve who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Under S. 118 cl. (3) of the Code of Cr. Pro. Act V of 1898 when a person in respect of whom an enquiry into the matter of keeping peace or security for good behaviour is made is a minor the bond shall be executed only by his sureties.

S. 345 of the same code deals with compounding of offences, and when the person who would otherwise be competent to compound an offence under this

section is a minor, an idiot, or a lunatic any person competent to contract on his behalf may compound such offence.

Whipping:—See S. 127.

Legality of summary trial by magistrate:—Where a person is prosecuted under s. 130, read with sec. 126 (a) of the Rys. Act, the offence is not one triable exclusively by a court of session. A magistrate has jurisdiction to try it and to try it summarily. *Emp. v. Dhondya Dudy* (1919) 52 Ind. Cas. 667 p. 668.

Offence S. 130 of the Rys. Act enacts an offence distinct from the offences in secs. 126 to 129 of the Act. A minor who is entitled to the benefit of S. 82 or S. 83 of the Penal Code, does not commit an offence when he is guilty of any of the acts or omissions referred to in secs. 126 to 129 of the Rys. Act. It is S. 130 of the latter Act, which by excluding the operation of these exceptions creates an offence. *Emp. v. Dhondya Dudy* (1919) 52 Ind. Cas. 667.

Procedure.

131. (1) If a person commits any offence mentioned in sections 100, 101, 119, 120, 121, 126, 127, 128 or 129 or in section 130, sub-section (1) he may be arrested without warrant or other written authority by any railway servant or police-officer, or by any other person whom such servant or officer may call to his aid.

Arrest for offences
against certain sec-
tions.

(2) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him or commit him for trial.

Under S. 42 of the Criminal Procedure Code (Act v or 1898) every person is bound to assist a Magistrate or Police officer reasonably demanding his aid whether within or without the Presidency towns; (a) in the taking or preventing the escape of any other person whom such Magistrate or Police officer is authorised to arrest; (b) in the prevention or suppression of a breach of the peace or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or other public property.

Intentional omission to assist a public servant is punishable under S. 187 I. P. Code. A Person refusing to aid a public servant is considered guilty of misdemeanour under S. 104 of the N. Y. Cr. Pro.

Persons arrested under Railway Act should be treated as in cognozable caso:—When an arrest is made under S. 131 of Act IX of 1890, of a person who, there is reason to believe, will abscond or whose name and address are unknown and he refuses to give them, or when given, are reasonably believed to be incorrect, the case should be sent to the Magistrate in accordance with the provisions of S. 170 Cr. Pro. Code as a cognizable case within the definition

S. 4 (f) of the Code, although the offence alleged against the accused be not itself cognizable, Bom. H. C. Cr. Cir. para 10a p. 4.

Execution of warrants against railway servants:—Warrants issued by Criminal Courts against railway servants should be entrusted for execution to some Police officer of superior grade, who shall, if he finds on proceeding to execute the warrant, that the immediate arrest of the railway servant would occasion risk or inconvenience, make all arrangements necessary to prevent escape, and apply to the proper quarter to have the accused relieved, deferring arrest until he is relieved, Bom. H. C. Cr. Cir. p. 4; Reg. and Ord. N. W. P. 349, Punjab Cir. p. 445.

To be drunk on railway premises is an offence:—The accused was arrested under sec. 131 of the Railway Act for being found in a state of intoxication on a railway station. The magistrate discharged him on the ground that the harm done was so slight that no notice would be taken of it under sec. 95 of the I. P. Code beyond a mere warning. On revision it was held that the accused should have been convicted, because to be drunk upon any part of a railway was to commit an offence under sec. 120 A of the Railway Act and the fact that he caused little or no annoyance to any one in particular would not exempt him from conviction under the section. *Johnscott* (1905) 1 N. L. R. 391.

For summons on railway servants:—Sec. 73 of C. P. Code (Act V of 1898).

132. (1) If a person commits any offence under this Act other than an offence mentioned in the last foregoing section, or fails or refuses to pay an excess charge or other sum demanded under section 113, and there is reason to believe that he will abscond, or his name and address are unknown, and he refuses on demand to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any railway servant or police-officer or any other person whom such railway servant or police-officer may call to his aid, may, without warrant or other written authority, arrest him.

Arrest of persons likely to abscond or unknown.

(2) The person arrested shall be released on his giving bail, or, if his true name and address are ascertained, on his executing a bond without sureties, for his appearance before a Magistrate when required.

(3) If the person cannot give bail and his true name and address are not ascertained, he shall, with the least possible delay, be taken before the nearest Magistrate having jurisdiction.

(4) The provisions of Chapters XXXIX and XLII of the Code of Criminal Procedure, 1882, shall, so far as may be, apply to bail given and bonds executed under this section.

1. The offences to which this Section relates are Ss. 99, 102 to 114, 116 to 118 and 122 to 125.
2. Ch. XXXIX (Ss. 496-592) of the Code of Cri. Pro. (Act V of 1898) deals with bail, and Ch. XLII (Ss. 513-516) of the same Code deal with bonds.

For provision analogous to this Section see. S. 57 of the Code of Criminal Pro. Act V of 1898; S. 516 of Act III of 1888 (The City of Bombay Municipal Act); S. 54 of the Madras Forest Act V of 1882; 52 and 53 Vict. C. 57 (Regulation of Railways Act 1889); S. 5 (2).

When a passenger can and cannot be detained:—A passenger cannot be detained though he does not produce or deliver up his ticket, but he pays the fare from the place whence he started; or he may refuse either to produce his ticket or to pay, but may be willing to give his name and address; but if he refuses to do any of the things above mentioned, then any officers of the company may detain him until he can be charged before a Magistrate. When a person who will not produce a ticket or pay the fare, and also refuses to give his name and address the company are within their rights in detaining him.

To give a false name or address is equivalent to refusing to give his name or address. If the name or address given is, in fact, false, the detention of the person is justifiable; but the company detain the person at their risk, because if the name and address turn to be correct, they have acted illegally and are liable to an action for false imprisonment. *Knight v. L. C. & D. Ry. Co.* 62 L. J. Q. B. 378; but a railway company are not liable in an action for assault and false imprisonment, by reason of one of their servants giving a passenger into custody, if the act is done in contravention of instructions and beyond the scope of the employment. *Walker v. S. E. Railway* 39 L. J. C. P. 346; *Edwards v. L. & N. W. Ry. Co.* 39 L. J. C. P. 241.

The above provision applies to season ticket holders as well as to others. *Woodward v. E. C. Ry. Co.* 30 L. J. M. C. 378.

It sometimes happens that a man has really got a ticket, but cannot find it when he is asked for it, and refuses to pay or give his name and address. In such cases he should be given plenty of time and every opportunity of finding the ticket. If the company detain him too soon, and without giving him reasonable opportunity, they will be liable for damages for false imprisonment. *Brotherton v. Metro & D. J. Co.* 9 T. L. R. 645.

Arrest by a railway servant:—If a railway servant arrest a man under S. 132 of Act IX of 1890, and makes him over to the Police, the action of the Police will be governed by the provisions of Section 59 of the Code of Criminal Procedure. *Reg. & Ord. N. W. P. Sec. 10 p. 349.*

Power of arrest must be exercised with caution:—The power of arrest conferred by Secs. 131 & 132 of the Indian Railways Act 1890 must be exercised with the greatest caution. G. R. R. Pt. II Rule 45.

133. No Magistrate other than a Presidency Magistrate or than a Magistrate whose powers are not less than those of a Magistrate of the Second Class shall try any offence under this Act.

Magistrates having jurisdiction under Act.

This Section corresponds with Ss. 26 & 30 of the Act XVIII of 1854 and Sec. 50 of Act IV of 1879.

Section 133 does not apply to proceedings under Section 113 of this Act. *Queen Emp. v. Nga Kyaw Swa* U. B. R. Vol. 1 p. 300.

For powers of a second class Magistrate:—See Sec. 32 (1) (b) of the Code of Criminal Procedure Act V of 1898.

Jurisdiction:—(1) Offences under the Railways Act cannot be tried by Magistrates of the 3rd Class. *Queen Emp. v. Mikin & Ayr* 1 U. B. R. 374; U. B. & Cr. Rev. 680 of 1898. (2) Magistrates of all grades are, under Madras Act III of 1865 competent to try persons charged with offences under Sec. 26 of the Railway Act XVIII of 1854. 4 Mad. H. C. R. App. 9.

(3). Accused was tried and convicted by a sub-magistrate of an offence under S. 24 of Act XVIII of 1854 punishable with transportation for life or imprisonment for any term not exceeding seven years. Upon a reference, held, that by virtue of Madras Act III of 1865 the sub-magistrate had jurisdiction, that Act not being repealed by the schedule attached to Act VIII of 1869. 7 Mad. H. C. R. App. 8.

(4). A railway watchman was charged before a Head Assistant Magistrate with an offence under Sec. 26 of Act XVIII of 1854; that charge was dismissed, but the Sessions Judge ordered a fresh trial. Held, that in so doing the Sessions Judge acted without jurisdiction. 6 Mad. H. C. R. App. 41.

Criminal jurisdiction along the railway through Independent States:—Illegal arrest on such lands:—The authority for the exercise of criminal jurisdiction by the Govt. of India, upon the lands within the limits of the Hyderabad State Railway is derived from a grant to that Govt. in 1887, by H. H. The Nizam as ruler of the territory. The railway lands remain part of his dominions.

This jurisdiction, notwithstanding any words in the notification of the Govt. of India of the 22nd March 1888, does not justify the arrest on the lands of the Hyderabad State Railway of a subject of the Nizam, under the warrant of the Magistrate of a District in British India, on a charge of a criminal offence committed in British India and unconnected with the Hyderabad Railway Administration.

The mere presence of the accused on the railway lands over which criminal jurisdiction had been granted as above, was no legal ground for his arrest under the warrant of the Courts in British India, his offence if committed at all, not having been committed on those lands, and not having been connected with the railway. *Mahomad v. The Queen Empress* 25 Cal. 20 (P. C.); See also *Emp. v. Ragunathrao* 5 Bom. L. R. 873.

134. (1) Any person committing any offence against this Act or any rule thereunder shall be triable for such offence in any place in which he may be or which the Local Government may notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

(2). Every notification under sub-sec. (1) shall be published in the local official Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at each of such railway stations as the Local Government may direct.

See Secs. 183 & 184 of the Code of Crim. Pro. Act V of 1898 given below.

Sec. 183:—An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the things in respect of which, the offence was committed, passed in the course of that journey or voyage.

Sec. 184:—All offences against the provisions of any law for the time being in force, relating to Railways, Telegraphs, the Post Office or Arms and Ammunition, may be inquired into or tried in a Presidency-Town whether the offence is stated to have been committed within such town or not:—Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

Journey not broken by halt:—A box containing money having been missed during a halt at S, in the Dist. T., from a boat which was on the way to C:—Held, that the journey was not broken by the halt at S and that the case could be tried at C. *Queen v. Abdulali & others* 25 W. R. 45.

Offence committed in the course of journey or voyage:—The complainant and the accused left in a boat from Bombay to Honawar. During the voyage, within 9 miles off the Janjira State, the accused threw over-board a box belonging to the complainant, for which on arrival at Honawar, he was charged with mischief.—Held, that the Magistrate at Honawar, through whose jurisdiction the accused passed on the voyage, had jurisdiction to try the offence. *Queen Emp. v. Ismal* Cr. Ref. No. 26 of 1882.

The words "journey or voyage" do not include a voyage on the High Seas or in foreign territory, but are confined in their meaning to a journey or voyage within the territories in British India. *Bapu Daldi* 5 Mad. 23.



CHAPTER X.

SUPPLEMENTAL PROVISIONS.

135. Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely:—

Taxation of railways
by local authorities.

(1). A railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Governor General in Council has, by notification in the Official Gazette, declared the railway administration to be liable to pay the tax.

(2). While a notification of the Governor General in Council under Clause (1) of this Section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Governor General in Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

(3). The Governor General in Council may at any time revoke or vary a notification under clause (1) of this section.

(4). Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

(5). "Local authority" in this section means a local authority as defined in the General Clauses Act, 1887, and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river.

1 of 1887.

Liability of Railway Administrations to pay Municipal taxes:—*No. 9977, dated the 29th November, 1907:—*In pursuance of Clause (1), Section 135 of the Indian Railways Act, 1890 (IX of 1890), and in supersession of the Notifi-

cations of the Government of India in the Public Works Department, No. 270, dated the 12th June 1890, and No. 136, dated the 6th April 1893, the Governor-General in Council is pleased to declare that every Railway Administration in British India shall hereafter be liable to pay, in respect of property within any local area, every tax which may lawfully be imposed by any local authority in aid of its funds, under any law for the time being in force. (See Gazette of India, 1907, Part 1, p. 1075.

Officers appointed to determine amount of taxes payable in disputed cases:—No. 350, dated the 22nd August 1894;—The following is published for general information;—No. 434, R. T., dated 17th August 1894.

Resolution:—The Governor-General in Council having carefully considered the question is of opinion that a general revision of the existing system of local taxation in regard to railway is unnecessary.

2. Should any railway administration however consider that any particular tax or its assessment is unreasonable or disproportionate to the services rendered, the Governor-General in Council is pleased to decide that an application for the revision of such tax or assessment should be made direct to the commissioner in charge of the Division in which the tax is levied, or, where there is not such a commissioner, to the officer holding a position corresponding to that of a commissioner, (e. g., the Collector in the Presidency of Madras or the Deputy commissioner in Sylhet or Cachar), who is hereby appointed under Section 135, sub-Section (2), of the Indian Railways Act, 1890, (IX of 1890), to inquire specially into all the circumstances of the case, and determine, in communication with the contending parties, the sum, if any, which should be paid.

3. The Governor-General in Council further desires to call the attention of local authorities to the Government of India, Public Works Department, Notification No. 270, dated the 12th June 1890, and No. 136, dated the 5th April 1893, (under which every Railway administration was declared liable to pay all taxes legally in force during the year ended on 30th April, 1890), and to direct that when it is sought to impose any new tax on a railway, application should be made through the local Government concerned for the sanction of the Governor-General in Council under Section 135 sub-Section (1), of the act referred to above. In all such applications the reasons for imposing the new tax must be fully explained, and at the same time the view of the railway administration affected thereby should be obtained by the local Government and submitted together with the application, (see Gazette of India, 1894, Part I. p. 486).

Definition of Local Authority:—The definition of Local Authority is given in Sec. 3 (28) of the General Clauses Act X of 1897 as meaning "A Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled, or entrusted by the Government with the control or management of a Municipal or Local fund."

Railway Company's liability to pay municipal rates:—The G. I. P. Ry. Co. which under an agreement with the Government holds the land upon which their railway is constructed free of rent for 99 years, are occupiers only and not owners of such land within the meaning of Sec. 2, Bombay Act II of 1865 and are therefore not liable to be rated as owners of the ground used by them for the purposes of the Railway within the City of Bombay.

Principles upon which railway companies are liable to be rated, considered and laid down. *Justices of the Peace for the City of Bombay v. G. I. P. Ry. Co.* 9 Bom. H. C. R. 217.

The debt company complied with the demand made by the Municipality of Tuticorin and paid Rs. 50 as profession tax under protest, and sued the Municipality for a refund. Held that the Municipality of Tuticorin had no right to levy the tax on the company and the amount paid was ordered to be refunded. *Municipal Council of Tuticorin v. S. I. Ry. Co.* 13 Mad. 78. As for rating railways in England see *Reg. v. Gr. Junc. Ry. Co.* 4 Q. B. 18. *Reg. v. G. W. Ry. Co.* 15 Q. B. 1085.

136. (1) None of the rolling-stock, machinery, plant, tools, fittings, materials or effects used or provided by a railway administration for the purpose of the traffic on its railway, or of its stations or workshops, shall be liable to be taken in execution of any decree or order of any Court [or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution] without the previous sanction of the Governor-General in Council.

Restriction on execution against railway property.

(2). Nothing in sub-section (1) is to be construed as affecting the authority of any Court to attach the earnings of a railway in execution of a decree or order.

For definition of Local authority see notes to Sec. 135 p. 401.

Attachment in execution of any decree or order of any court:—See Secs. 60 to 63 and rules 41 to 65 of Order XXI of the Code of Civil Procedure Act V of 1908.

137. (1) Every railway servant shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code.

Railway servants to be public servants for the purpose of Chapter IX of the Indian Penal Code.

(2) In the definition of "legal remuneration" in section 161, of that Code, the word "Government" shall, for the purposes of sub-section (1), be deemed to include any employer of a railway servant as such.

(3). A railway servant shall not—

- (a) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property put up to auction under section 55 or section 56, or,
- (b) in contravention of any direction of the railway administration in this behalf, engage in trade.

(4). Notwithstanding anything in section 21 of the Indian Penal Code, a railway servant shall not be deemed to be a public servant for any of the purposes of that Code except those mentioned in sub-section (1).

NLV of 1800.

Public servant:—For definition see Sec. 21 of the I. P. Code.

Legal remuneration:—The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Govt, which he serves to accept.—Sec. 161, of the I. P. Code.

Chapter IX of the Indian Penal Code include the following Sections.

S. 161. Public servant taking gratification other than legal remuneration in respect of an official act. S. 162. Taking gratification in order, by corrupt or illegal means, to influence public servant. S. 163. Taking gratification for exercise of personal influence with public servant. S. 164. Punishment for abetment by public servant of offence above defined. S. 165. Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant. S. 166. Public servant disobeying law with intent to cause injury to any person. S. 167. Public servant framing an incorrect document with intent to cause injury. S. 168. Public servant unlawfully engaging in trade. S. 169. Public servant unlawfully buying or bidding for property. S. 170. Personating a public servant and S. 171. Wearing garb or carrying token used by public servant with fraudulent intent.

A Motive or Reward:—It is essential that bribe should be obtained as “A Motive or Reward.”

The act must be an “official act” or omission in connection with official functions of the accused. If it is not an act of official duty, the receipt of money may be some other offence, but it is not a bribe. *Ratanlal on Crimes* 7th Ed. 327.

Goods clerk is both a Ry. servant and a public servant:—Goods clerk is a Ry. servant under Sec. 137 of Act IX of 1890 and is public servant for the purposes of Chapter IX of the I. P. Code, if he be in the service at the time the offence is committed. *Queen v. Zaharia* 9 P. R. 1893 S. C. Punj. C. C. 138 of

138. If a railway servant is discharged or suspended from his office, or dies, absconds or absents himself, and he or his wife or widow, or any of his family or representatives, refuses or neglects, after notice in writing for that purpose, to deliver up to the railway administration, or to a person appointed by the railway administration in this behalf, any station, dwelling-house, office or other building with its appurtenances, or any books, papers or other matters, belonging to the railway administration and in the possession or custody of such railway servant at the occurrence of any such event as aforesaid, any Magistrate of the first class may, on application made by or on behalf of the railway administration, order any police officer, with proper assistance, to enter upon the building and remove any person found therein and take possession thereof, or to take possession of the books, papers or other matters, and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf.

This section is taken from S. 106 of the Railway Clauses Act 1845 (8 Vic. Ch. 20).

Surrender of railway property on leaving service:—When a railway servant leaves the service, he must deliver up to the Railway Administration, or to a person appointed by the Railway Administration in this behalf, any property in his custody which belongs to the railway Administration:—Rule 243 of General Rules for open lines published by G. I. notification No. 801 dated 24th March 1905; Railway Board Circular No. R. T. 39 A of 8th September 1906.

5

Railway employee, how to be ejected from staff quarters:—Sec. 122 (2) of the Indian Rys. Act cannot be applied to eject a railway employee from the staff quarters, occupied by him while under employment of the Railway Company. Staff quarters or any building of a residential quarter cannot be deemed to be a part of a "Railway" within the meaning of sec. 3 (4) of the Act.

Possession of the staff quarters lawfully obtained by a Railway employee, while under the service of the Railway, can be lawfully determined only by steps taken under sec. 138 of the Railways Act, and the fact of his dismissal does not, by itself, put an end to his right of possession.

In order to render such possession unlawful, there must be an interruption of possession, and a re-entry after such interruption.

It cannot be said that a true owner may at all times, enter his own premises and use force and violence to eject a trespasser, such an act, though not tortious

and actionable, may still give rise to criminal liability if attended with force and violence. *Margam Aiyar v. S. J. Meier* (1914) M. W. N. 124; 15 Cr. L. J. 225 = 23 Ind. Cas. 177.

139. Any notice, determination, direction, requisition, appointment, expression of opinion, approval or sanction to

Mode of signifying communications from the Governor General in Council.

be given or signified on the part of the Governor General in Council, for any of the purposes of, or in

relation to, this Act, or any of the powers or provisions therein contained, shall be sufficient and binding if in writing signed by a Secretary, Deputy Secretary, Under-Secretary or Assistant Secretary to the Government of India, or by any other officer or servant authorized to act on behalf of the Governor General in Council in respect of the matters to which the same may relate, and the Governor General in Council shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in manner aforesaid.

See Sec. 53 of the Railway & Canal Traffic Act, 1888. (51 & 52 Vict. C. 25).

No. 802, dated the 24 March 1905:—In the exercise of the powers conferred by Sec. 139 of the Indian Railways Act IX of 1890, as in force in British India and as locally applied, the Governor-General in Council is pleased to authorise the Secretary of the Railway Board to sign all documents containing any notice, determination, direction, requisition, appointment or expression of opinion, approval or sanction given or signified on the part of the Governor-General in Council for any of the purposes of, or in relation to, the said Act or any of the powers or provisions therein contained.—See Gazette of India 1905, Part, I, 233.

140. Any notice or other document required or authorized by

Service of notices on railway administrations.

this Act to be served on a railway administration

may be served, in the case of a railway administered

by the Government or a Native State, on the Manager and, in the case of a railway administered by a railway company, on the Agent in India of the railway company—

(a) by delivering the notice or other document to the Manager or Agent; or

(b) by leaving it at his office; or

(c) by forwarding it by post in a prepaid letter addressed to the

Manager or Agent at his office and registered
XIV of 1866. Part III of the Indian Post Office Act, 1866.

See sec. 135 of the Companies Clauses Act, 1845 (8 & 9) Vict. C. 16) and S. 134 of the Land Clauses Act, 1845 (8 Vict. 18).

Object of this Section:—Sec. 140 is an enabling provision and gives the party the option of serving the notice on the Agent or Manager of the railway company instead of on the railway administration at its registered office. It refers to three modes by which service may be effected namely (1) delivery of the notice to the Manager or Agent personally (2) leaving it at its office (3) sending it by registered post. The second & third methods are not personal service, but a person is relieved from further liability if he leaves the notice at the Agent's office or sends it by registered post, even if the notice for some reason does not actually come into the Agent's hands. The object of the section is to see that the company gets notice and there is no magic in the methods provided for by the section to see that it reaches him, if as a matter of fact the notice come into his hands. Supposing the plaintiff adopts the method of sending the notice by post without registration and the Agent admits receipt of the notice which is otherwise valid there is no reason for holding that non-registration is such a vital defect that it invalidates the notice. So far as notices of action are concerned the substantial point is whether they reached the person to whom the law requires notice to be given and the method by which he received it, is a matter which is of comparative unimportance and a deviation from the methods prescribed in the section will be only an irregularity. *Mahadev v. S. I. Ry. Co.* (1922) 42 Mad. L. J. 202 p. 217; 69 Ind. Cas. 59.

This Section is enacted in order to save parties from the inconvenience of being obliged to serve the company itself, by rendering service on the Agent in India equivalent to service on the principal, and further by providing that service on the Agent, though not personal, would be sufficient if effected in either of the modes pointed out in clauses (b) and (c) of this Section *Perianan v. S. I. Ry. Co.* 22 Mad. 137 at p. 139.

Service of notice:—Service of notice is of no avail unless it be communicated to the Agent or the Manager as the case may be, in the prescribed mode. Though notices of action are not to be constructed with extreme strictness, there must be a substantial compliance with the terms of the Act by which they are prescribed.

A notice in the newspapers of a claim or an oral communication is not sufficient. *E. I. Ry. Co. v. Jethmal* 26 Bom. 669 at pp. 686 to 688; *G. I. P. R. v. Devsey Versey* 31 Bom. 534 = 9 Bom. L. R. 942. Contra—*Mahadev v. S. I. Ry. Co.* (1922) 69 Ind. Cas. 59.

Notice to A is no notice to B:—Notice of claim for goods lost in transit given to Railway Company A with whom they were originally booked is not, within Ss. 77 & 140 of the Railways Act, sufficient notice to Railway Co B, on whose line the goods were subsequently lost. *Tilakchand v. E. I. Ry. Co.* 12 Cal. W. Notes 165; *E. I. Ry. Co. v. Jethmul* 26 Bom. 669.

✓ **Notice must be given to the Manager or Agent:**—A notice of claim for short delivery was served upon the Traffic Manager of a Railway administered by a Railway Company and not on the Agent. Held that such a notice was not a sufficient compliance with the provisions of Secs. 77 & 140 of the Railway Act.

The word "*May*" in Sec. 140 of the Indian Railways Act means, that if a person is desirous of serving an effective notice of claim, the notice *must* be directed to the Manager or Agent as the case may be. *Nadiarchand Shah v. Wood* 35 Cal. 194; 12 Cal. W. N. 450; *G. I. P. Ry. Co. v. Chandrabai* 28 All. 552. See also cases noted under s. 77 at p. 313. Contra *Mahadev v. S. I. Ry. Co.* (supra). Where it has been held that the word "*may*" in Sec. 140 does not mean "*must*" so as to make other modes of service ineffectual even in cases where the notice has actually reached the agent.

Notice not necessary in case of non-delivery of goods:—S. 77 of the Railways Act does not apply to a case of non-delivery of goods, consequently a Railway Company is not entitled in such a case to the notice mentioned therein. *E. I. Railway v. Kali Charan* (1922) 69 Ind. Cas. 103; When there has been an assignment of the power to settle claims on the part of the Agent of a Railway Company in favour of the General Traffic Manager, a notice under the Railways Act sent to the latter is sufficient. *E. I. Ry. v. Kali Charan* (supra). See also *E. I. Railway v. Ram Autar* 38 Ind. Cas. 502.

Agent in India—meaning of:—The Agent in India does not mean any person employed by the Railway Company. It means the particular person who holds the title and office of the Agent of the railway company in India. *Radha Kishan v. E. I. Ry. Co.* (1914) 19 Cal. W. N. at p. 63.

Notice to Collector sufficient when railway is administered by Government:—In the case of a railway administered by Government, notice under Section 77 is effective, if served on Government, and Section 140 does not mean that the "*Manager*" is the only person on whom notice can be served.

Section 140, has not the effect of cutting down the connotation of the words, "*Railway Administration*" as contained in Sec. 3, (6). It only provides for the convenience of the party aggrieved that if he wants to serve the notice on the Manager of the State Railway, or the Agent of the Railway Company, he must do so in one of the ways mentioned there. If the party chooses to give notice to the Government, or the Native State of the Railway Company, there is nothing in the Act to prevent his doing so; the latter alternative may enhance his trouble, but it cannot take away his rights. The clause "*includes the Government*" has the effect of extending the meaning of the words Railway Administration, whereas the said words might not mean the Government, when there was a "*Manager*". It is not necessary to serve notice both on the *Collector* and the *Manager*. *Radha Shyam Basak v. The Secretary of State* (1916) 20 Cal. W. N. 790, at p. 793 = 44 Cal. 16.

Secretary of State to be sued as deft in suit against State Railway:—In a suit against the State Railway for compensation it has been held

that the Traffic Superintendent is not the proper party to be sued. It should be against the Secretary of State. *Traffic Superintendent E. B., E. I., & O. R. Ry. v. Hafiz Abdul* 4 O. C. 133. (Oudh Cases).

Service on Railway Company:—For the purpose of summons its principal office must be deemed to be the place of its dwelling. 1 Hyde 197; *Clokey v. L. & N. W. Ry. Co.* (1905) 2 I. R. 251.

Registration of letters:—See Secs. 28 and 29 of the Indian Post office Act VI of 1898.

Limitation:—Art 30 of Sched. 1 to the Limitation Act refers to losing or injuring goods by the carrier and not by the consignee, that is to say, time begins to run from the time when the carrier lost or injured the goods and not from the time when the consignee may be said to have suffered loss. The words "against a carrier for losing &c." mean an actual losing of goods by the carrier himself and the burden of proving that the goods were lost more than one year before the institution of a suit for damages is on the carrier. *Jugal Kishore v. G. I. P. Ry.* (1922) 63 Ind. Cas. 931.

In an action for damages for non-delivery of goods consigned to a railway company, where no time is fixed for delivery, if the correspondence between the parties shows that the matter was being inquired into and that there was no refusal to deliver, up to well within a year of the suit, Art 31 of the Limitation Act, cannot be pleaded as a bar, for, in such a case, it cannot be said that the suit was brought more than a year from the expiry of a reasonable time within which the goods should have been delivered. *Jugal Kishore v. G. I. P. Ry.* (Supra). (*M. & S. M. Ry. v. Bhimappa* 17 Ind. Cas. 419; 23 M. L. J. 511 relied on).

Form of suit against Railway Company—Amendment of plaint:—Sections 140 and 141 of the Railways Act merely set forth the manner in which notices may be served on a Railway Administration. Order 29 of the Civ. Pro. Code deals with the subscription and verification of pleadings in suits by or against a corporation and with service on a corporation. They say nothing about the manner in which the suit itself is to be framed. The form under which a company should be sued is given in appendix A to Civ. Pro. Code.

However liberal the court may be in allowing amendments in the interest of justice, an amendment will not be allowed which would prejudice the rights of the opposite party existing at the date when the proposed amendment is to be made, e.g. a right acquired by virtue of the Statute of Limitation. *Sinchi Ram v. Agent, E. I. Railway* (1921) 64 Ind. Cas. 125; 2 Patna Law Times 679. 15 W. R. 534 43 Cal. 441.

141. Any notice or other document required or authorized by this Act to be served on any person by a railway administration may be served—

Service of notices
by railway admini-
strations.

(a) by delivering it to the person; or

(b) by leaving it at the usual or last known place of abode of the person; or

(c) by forwarding it by post in a prepaid letter addressed to the person at his usual or last known place of abode and registered under Part III of the Indian Post Office Act, 1866.

Cf. The Companies Clauses Act, 1845 (8 & 9 Vict. C. 16), S. 136. and The Railways Clauses Act, 1845 (8 & 9 Vict. C. 20), S. 34.

Last known place of abode:—The fact that the defendant frequently attended his brother's place of business at No. 36, Fanaswadi, Bombay, was not sufficient to make that place his "*last known address*." If there had been evidence that he had used No. 36 Fanaswadi, as an address for receiving letters, that might probably have been sufficient. It would then have been known as his address—at least as an address. *The London Bombay and Mediterranean Bank v. Govind Ramchandra* 5 Bom. 223.

142. Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

Presumption where notice is served by post.

Cf. S. 35 of the Regulation of Railways Act 1873 (36 & 37 Vict. C. 48) and S. 46 (2) of the Income Tax Act II of 1886.

143. (1) A rule under section 22, section 34 or section 84, or the cancellation, rescission or variation of a rule under any of those sections or under section 47, sub-section (4) shall not take effect until it has been published in the Gazette of India.

Provisions with respect to rules.

(2) Where any rule made under this Act, or the cancellation rescission or variation of any such rule, is required by this Act to be published in the Gazette of India, it shall, besides being so published, be further notified to persons affected thereby in such manner as the Governor General in Council, by general or special order, directs.

(3) The Governor General in Council may cancel or vary any rule made by him under this Act.

S. 22 gives the Governor General in Council power to make rules with respect to the opening of Railways.

S. 34 gives the Governor General in Council power to make rules regulating proceedings before the railway Commissioners and for Traffic Facilities.

S. 84 gives the Governor general in Council power to make rules regulating fees of, and inquiries into, accidents.

S. 47 (4) gives the Governor General in Council power to cancel any rule made under that section with respect to the working of Railways.

Now by Act IV of 1905 "The Indian Railway Board's Act" the Governor General in Council has invested the Railway Board with all powers to make rules for Railways administered by Government, *Vide App. C.*

144. (1) The Governor General in Council may, by notification in the Gazette of India, invest, absolutely or subject to conditions, any Local Government with any of the powers or functions of the Governor General in Council under this Act with respect to any railway, and may, by at or a like notification, declare what Local Government shall, for the purposes of the exercise of powers or functions so conferred, be deemed to be the Local Government in respect of the railway.

(2) The provisions of section 139 with respect to proceedings of the Governor General in Council shall, so far as they can be made applicable, apply to proceedings of a Local Government exercising the powers or discharging the functions of the Governor General in Council in pursuance of a notification under sub-section (1).

Delegation of powers to Local Government:—*No. 268, dated the 11th June 1890*—In exercise of the powers conferred by s. 144, of the Indian Railways Act 1890, the Governor General in Council is pleased to delegate to Local Governments, in regard to railways under their control, and to the extent and subject to the conditions hereinafter specified, the following powers and functions which are now vested in him under the said Act; the powers and functions hereby delegated being liable to be revoked or varied, and the exercise and discharge thereof to be controlled, as the Governor General in Council may from time to time think fit:—

- (1). Ss. 7, 9 & 11:—All the powers and functions of the Governor General in Council subject to the proviso that the exercise and discharge of such powers and functions will not entail any expenditure in excess of the general powers of sanction of the Local Government concerned.
- (2). S. 48—All the powers and functions of the Governor-General in Council, only in cases where the railways concerned are under the control of one and the same Local Government.
- (3). S. 54:—All the powers and functions of the Governor-General in Council.
- (4). Ss. 5., 51 Clauses a, b, c, d, and e, and S. 55:—All the powers and functions of the Governor-General in Council.

- (5). S. 63:—The powers of determining the vernacular languages in which the maximum number of passengers, to be carried in each compartment, shall be exhibited.
- (6). S. 83:—The power of notifying the Magistrates and Police-Officers to whom notices of railway accidents are to be given.

See Gazette of India, 1890, Part I, p. 438.

145. (1) The Manager of a railway administered by the Government or a Native State, and the Agent in India of a railway administered by a railway company, may, by instrument in writing, authorise any railway servant or other person to act for or represent him in any proceeding before any Civil, Criminal or other Court.

Representation of
Managers & Agents of
Railways in Court.

(2). A person authorised by a Manager or Agent to conduct prosecutions on behalf of a railway administration shall, notwithstanding anything in Section 495 of the Code of Criminal Procedure, 1882, be entitled to conduct such prosecutions without the permission of the Magistrate.

X of 1882.

Section 495 of the Code of Criminal Procedure Act V of 1898. (S. 495 of X of 1882), runs as follows:—

495. (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of Police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor General in Council, but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other Officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

Permission to con-
duct prosecution.

(2). Any such officer shall have the like power of withdrawing from the prosecution as is provided by S. 494 and the provisions of that Section shall apply to any withdrawal by such officer.

(3). Any person conducting the prosecution may do so personally or by a pleader.

(4). An officer of Police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

“Instrument” includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished, or recorded.—Stamp Act II of 1899, S. 2, (14).

146. The Governor General in Council may, by notification in the Gazette of India, extend this Act or any portion thereof to any tramway worked by steam or other mechanical power.

Power to extend Act to steam-tramways.

Extension of Act to any tramway worked by steam or other mechanical power:—(1) For extension of the Indian Railways Act, 1890, to certain steam tramways, *vide* Gazette of India 1896 Part I p. 498; and to *Behar Light Railway*, *vide* Gazette of India 1898, Part I, p. 467; 1903, Part I. p. 727; and 1904, Part I. p. 744.

(2) For extension of this Act except S. 135 to *Saharanpur Light Railway* *vide* Gazette of India, 1907, Part I, p. 569; to *Parlakimedi Steam Railway* *vide* *Madras Rules and Orders* Vol. I. See also Fort St. George Gazette 1901, Part I. p. 992.

When company liable:—Where a Tramway Company give to their conductors printed instructions not to give passengers into custody without the authority of an Inspector or time-keeper, except in cases of assault, and the conductor of a car in which the plaintiff was a passenger detained the plaintiff on a charge of passing bad money, it was held, in an action for false imprisonment against the company that they were not liable. *Charleston v. London Tramways Co.* (1887) 36 W. R. 367; but where no such instructions were given the company were held liable. *Furlong v. S. L. Tram Co.* 48 N. P. 829 *Abrahams v. Deakin* (1891), 1 Q. B. 516. *Stevens v. Hinshelwood* 55 N. P. 341. *Steadsman v. Baker & Co.* (1896) 12 T. L. R. 451. *Hanson v. Waller* (1901) 1 K. B. 390. *Gray v. Fiddian* 15 Mad. 73.

Company liable for action of a conductor:—A Conductor of a tramcar had by the company's by-laws power to collect fares which were payable on demand, and to prevent people travelling without paying. A passenger refused to pay his fare and thereupon the conductor took him by the collar and pushed him out of the car:—Held that the company were liable in respect of the assault upon and injuries sustained by the passenger. *Smith v. North Metropolitan Tramways Co.* 55 N. P. 630 C. A.

147. The Governor General in Council may, by a like notification, exempt any railway from any of the provisions of this Act.

Power to exempt railways from Act.

Exemption of Barsi Light Railway Company from the provisions of S. 35:—*Vide* Gazette of India (1896) Part I. 303.

Exemption of E. I. & B. N. Ry. from the provisions of S. 42 (2):—Gazette of India Extraordinary Railway-Department, declares that in exercise of the powers confirmed by section 147 of the Indian Railways Act, 1890 (9 of 1890), the Governor General in Council is pleased to exempt The East Indian and the Bengal Nagpore Railway from the provisions of sub-action (2) of section 42 of the Act.

148. (1) For the purposes of section 3; clauses (5), (6) and (7), and sections 4 to 19 (both inclusive), 47 to 52 (both inclusive), 59, 79, 83 to 92 (both inclusive), 96, 97, 98, 100, 101, 103, 104, 107, 111, 122, 124 to 132 (both inclusive), 134 to 138 (both inclusive), 140, 141, 144, 145 and 147, the word "railway," whether it occurs alone or as a prefix to another word, has reference to a railway or portion of a railway under construction and to a railway or portion of a railway not used for the public carriage of passengers, animals or goods as well as to a railway falling within the definition of that word in Section 3, Clause (4),

(2). For the purposes of sections 5, 21, 83, 100, 101, 103, 104, 121, 122, 125 and 137, sub-sections (1), (2) and (4), and section 138, the expression "railway servant" includes a person employed upon a railway in connection with the service thereof by a person fulfilling a contract with the railway administration.

149. In Sections 194 and 195 of the Indian Penal Code, for the words "by this Code or the law of England" the words "by the law of British India or England" shall be substituted.

Secs. 194 and 195 of the I. P. Code deal with offences of giving or fabricating false evidence with intent, to procure conviction of a capital offence and to procure conviction of an offence punishable with transportation or imprisonment.

150. For that portion of the preamble to the Sindh-Pishin Railway Act, 1887, which begins with the words "so far as it applies" and ends with the words "in its entirety", the words "should apply in its entirety to that part of the Sindh-Pishin Section of the North-Western Railway which lies beyond the Province of Sindh" shall be substituted.

THE INDIAN RAILWAYS ACT.
THE FIRST SCHEDULE.

THE FIRST
SCHEDULE.]

ENACTMENTS REPEALED.

(See Section 2).

Number and year.	Title.	Extent of repeal.
<i>Acts of the Governor-General in Council.</i>		
III of 1865. ...	Carriers Act, 1865.... ...	Section 7 (so far as it relates to railways) and section 10.
IV of 1879. ...	Indian Railways Act, 1879. ...	The whole
IV of 1883. ...	Indian Railways Act, 1883. ...	The whole.
XI of 1886. ...	Indian Tramways Act, 1886. ...	Section 49.
3 *	. . . . .	. . .
<i>Acts of the Lieutenant-Governor of Bengal in Council.</i>		
II of 1882. ...	Bengal Embankment Act, 1882. ...	Section 16 and in S. 17 the proviso to the first paragraph of that section, the words "or under the section last preceding" & the words "or railroad" wherever they occur.

1. General Acts, Vol. I.

2. General Acts, Vol. III.

3. The entry relating to the Upper Burma Laws Act, 1886, (20 of 1886) was repealed by the Burma Laws Act 1898, (13 of 1898), see Bur. Code.

4. Penal Code, Vol. I.

THE SECOND SCHEDULE.

ARTICLES TO BE DECLARED AND INSURED.

(See section 75.)

- (a) gold and silver, coined or uncoined, manufactured or unmanufactured;
- (b) plated articles;
- (c) cloths and tissue and lace of which gold or silver forms part, not being
XX of the uniform or part of the uniform of an officer, soldier, sailor, police-officer
1869. or person enrolled as a volunteer under the ¹Indian Volunteers Act, 1869,
or of any public officer, British or foreign entitled to wear uniform;
- (d) pearls, precious stones, jewellery, Jade, Jadestones and trinkets;
- (e) watches, clocks and timepieces of any description;
- (f) Government securities;
- (g) Government stamps;
- (h) bills of exchange, hundis, promissory-notes, bank-notes and orders or
other securities for payment of money;
- (i) maps, writings and title-deeds;
- (j) paintings, engravings, lithographs, photographs, carvings, sculpture and
other works of art;
- (k) art pottery and all articles made of glass, china or marble;
- (l) silk in a manufactured or unmanufactured state, and whether wrought up
or not wrought up with other materials;
- (m) shawls;
- (n) lace and furs;
- (o) opium;
- (p) Narcotic preparations of hemp, such as ganja, charas, bhang &c.
- (q) ivory, ebony, coral and sandalwood.
- (r) Amber musk, sandalwood-oil and other essential oils used in the preparation
of *itr* or other perfume.
- (s) musical and scientific instruments;
- (t) Crude India Rubber;
- (u) (1) Feathers, (2) Gooroochand or Gooroochandani, (3) Itr, (4) Zahir Mohra
Khatai, (5) Cinematograph films and apparatus.
- (v) any article of special value which the Governor General in Council may,
by notification in the Gazette of India, add to this schedule.

See notes to S. 75, pp. 306 to 310.

APPENDIX A.**General Rules for Indian Railways.**CIRCULAR No. R. T. $\frac{89 A.}{5}$ **RAILWAY BOARD.***Simla, the 8th September 1906.*

**General Rules for open lines of Railway in
British India administered by the Govern-
ment, and for the time being used for
the public carriage of passengers,
animals, or goods.**

RESOLUTION :—In their letter No. 958 R. T., dated the 9th November 1903, the Government of India in the Public Works Department expressed the opinion that the recent advance in signalling and block-working on railways in India necessitated a revision of Part I of the General Rules for working open lines of railway promulgated with their Circular No. 6, Railway, dated the 12th March 1895. This, it was considered, should be undertaken by a committee specially selected and appointed for the purpose. In this view and in order to assist in the consideration of the matter, Local Governments, Administrations, Officers in charge of Railways, and Railway Administrations were consulted and their opinion invited as to the need for reform. The opinions expressed were later circulated for the information of Local Governments, Administrations, Officers in charge of Railway and Railway Administrations, under Government of India, Public Works Department, letter No. 580. R. T. dated the 24th June 1904, with the intimation that it had been decided to entrust the revision of the rules to a Committee composed of officers from the Traffic, Locomotive and Engineer Departments, and a Signal Engineer.

2. The Committee duly considered and framed a set of rules so as to meet the many varying needs of the railways in India, from those of last and heavy traffic, to those of very light traffic worked by daylight only. This draft was further circulated for information, under Government of India, Public Works Department letter No. 1045. R. T., Dated the 10th November 1904, and taken into consideration by the Government of India in the Public Works and Legislative Departments. A further revised draft was circulated under Railway Board's letter No. R. T. 89, dated the 5th May 1905, and subsequently placed before the Indian Railway Conference Association for their consideration and recommendations.

3. The recommendations of the Conference having been considered by the

Railway Board and by the Government of India in the Legislative Department a complete and revised set of General Rules has now been framed.

4. Part II of the General Rules, promulgated with the Government of India, Public Works Department, Circular No. 6.—Railway, dated the 12th March 1895, has however, not been revised, but the opportunity has been taken to reprint it with such amendments to date as have been issued from time to time.

5. In exercise of the powers conferred by the notification of the Government of India in the department of Commerce and Industry, No. 801, dated the 24th March 1905 read in the preamble above, the Railway Board sanction, under section 47, sub-section (3), of the Indian Railways Act, 1890 (IX of 1890), and in supersession of the rules annexed to the Government of India, Public Works Department, Circulars Nos. 17. R., dated the 21st August 1880, 3.—Railway, dated the 19th April 1892, and 6.—Railway, dated the 12th March 1895, and of all other rules made in this behalf, the adoption by the Administrations of all lines of railway in British India administered by the Government and for the time being used for the public carriage of passengers, animals, or goods, of the accompanying General Rules, and direct that they shall be brought into force on the 1st January 1907.

6. The Railway Board desire that the said rules may be brought to the notice of the Administrations of the several railways not administered by the Government and that the Agents and Managers of those railways may be invited to submit a formal application for the adoption of the rules, with such modification (if any) as may be considered necessary in each case.

ORDER.—Ordered that this circular, with its enclosures, be published under

<p>The Honourable the Agent to the Governor-General for Rajpootana</p>	<p>a, Public ices and ent.</p>	<p>a notification in the <i>Gazette of India</i> as re- quired by section 47, sub-section (3), of the Indian Railways Act, 1890 (IX of 1890), and that a copy thereof be kept open for inspection at railway stations as directed by sub-section</p>
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(6) of the same section; also that a copy of this circular and of its enclosures be communicated to the Governments, Administrations and Officers noted in the margin for information.

The rules themselves will be found in the supplement to the *Gazette* of this date.

By order,

C. A. R. BROWNE, Lt. Col., R. E.,
Secretary, Railway Board.

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PART I.

RULES FOR THE GUIDANCE OF RAILWAY SERVANTS.

CHAPTER I.

PRELIMINARY.

1. Definitions:—In these Rules, unless there is anything repugnant in the subject or context,—

(1) "adequate distance" means the distance sufficient to ensure safety, having regard to the local conditions obtaining;

(2) "approved special instructions" mean special instructions approved of or prescribed by the Government Inspector;

(3) "authorised officer" means the person who is duly empowered by general or special order of the Railway Administration, either by name or by virtue of his office, to issue instructions or do any other thing;

(4) "authority to proceed" means the authority given to the Driver of a train, under the system of working, to leave the station with his train;

(5) "ballast train" means a train intended for the carriage of ballast, stone, material or fuel when picked up or put down either between stations or within station limits;

(6) to "block back" means to despatch a message from a station intimating to the station immediately in rear on a double line, or to the next station on either side on a single line, that the block-section is obstructed or is to be obstructed;

(7) to "block forward" means to despatch a message from a station on a double line intimating to the station immediately in advance the fact that the block-section in advance is obstructed or is to be obstructed;

(8) "block-section" means that portion of the running road between two stations on to which no running train may enter, until permission to approach has been received from the station at the other end of the section;

(9) the expression "connections" when used with reference to a running road, means the points and crossings or other appliances used to connect such road with other roads or to cross it;

(10) "day" means from sunrise to sunset;

(11) "Engine Driver" means the person for the time being in charge of a working locomotive engine;

(12) "fixed signal" includes a semaphore arm for use by day and a fixed light for use by night;

(13) "fouling point" means the point at which the infringement of fixed Standard Dimensions occurs, where two tracks cross or join one another;

(14) "Ganger" means the person in charge of a gang of plate-layers or other workmen employed on the permanent-way;

(15) "goods train" means a train (other than a ballast train) intended solely or mainly for the carriage of animals or goods;

(16) the expression "Government Inspector", when used with reference to any railway, means an Inspector appointed to exercise any functions under the Indian Railways Act, 1890, (IX of 1890), in respect of that Railway;

(17) "Guard" includes a Brakesman or any other railway servant who may for the time being be performing the duties of a Guard;

(18) "last Stop signal" means the Starting signal or (if there are two Starting signals) the advanced Starting signal;

(19) "main line" means the line ordinarily used for running trains through and between stations;

(20) "mixed train" means a train intended for the carriage of passengers and goods or of passengers, animals and goods;

(21) "night" means from sunset to sunrise;

(22) "obstruction" or "obstructing" means a train, vehicle or obstacle on or fouling a line, or any condition which is dangerous to trains;

(23) "ordinary train" means a train whether passenger, goods or mixed, which is entered in the Working Time-tables;

(24) "passenger train" means a train intended solely or mainly for the carriage of passengers and other coaching traffic, and includes a troop train;

(25) "permission to approach" means the permission given from a station to a station in rear for a train to leave the latter and approach the former;

(26) "running road" means the track, which may consist one or more lines with the cross-over roads connecting them, to be used by a train when entering or leaving a station or when passing through a station or between stations;

(27) "running train" means a train which has started under an authority to proceed and has not completed its journey;

(28) "special instructions" means instructions issued from time to time by the authorised officer in respect to particular cases or special circumstances;

(29) "special train" means any train which is neither an ordinary train nor a fast train;

(30) "station" means any place on a line of railway at which traffic is booked or dealt with, or at which an authority to proceed is given under the system of working;

(31) "station limits" mean the portion of a railway which is under the control of the Station Master and is situated between the outer-most signals of the station;

(32) "Station Master" means the person on duty who is for the time being responsible for the working of the traffic within station limits, and includes any person who is for the time being in independent charge of the working of any line and responsible for obtaining and sending the permission to approach and giving the authority to proceed;

(33) "station section" means that section of station limits at a Class B station which is included—

(a) on a double line, between the Home signal and the last Stop signal of the station in either direction, or

(b) on a single line—

(1) between the Shunting Boards or Advanced Starters if any, or

(2) between the Home signals if there are no Shunting Boards or Advanced Starters, or

(3) between the outermost facing points if there are no Home or Starting signals or Shunting Boards.

(34) "system of working" means the system adopted for the time being for the working of trains on any portion of a railway; and

(35) "train" means an engine, with or without vehicles attached.

2. **Classifications of stations.**—Stations shall, for the purposes of these Rules, be deemed to be divided into the following classes, namely:—

Class A stations.—where permission to approach may not be given for a train, unless the line on which it is intended to receive the train is clear for at least a quarter of a mile beyond the Home signal, or up to the Starting signal (if any);

Class B station.—where permission to approach may be given for a train, where the line has been cleared for the reception of the train within the station limits or within the station limits, as the case may be;

Class C stations.—block-huts, at which no trains are booked to stop; and

Class D stations.—stopping-places or flag stations, which are situated between consecutive stations of Class A, Class B or Class C, and do not form the boundary of any block-section.

CHAPTER II.

SIGNALS.

A.—GENERAL PROVISIONS.

3. **General use of signals.**—The signals prescribed in these rules shall be used for controlling the movement of trains in all cases in which exceptions are not allowed by approved special instructions,

4. **Kinds of signals.**—The signals to be used for controlling the movement of trains shall be—

fixed signals, hand signals, and detonating signals.

5. **Use of night signals by day.**—The signals prescribed in these rules for use by night, shall also be used by day in tunnels and in thick or foggy weather.

FIXED SIGNALS.

6. **Use of semaphore Stop signals and Warning signals.**—Unless approved special instructions are issued to the contrary, all railways shall be equipped with semaphore signals which shall be either Stop signals or Warning signals.

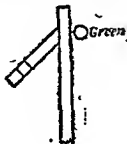
7. **Description of Stop signals, and their indications.**—(1) When a Semaphore signal is used as a Stop signal, the arm shall be square-ended, and the signal shall be arranged to give two indications, namely, "Stop" and "Proceed," either by the position of the arm or by the showing of a light.

(2) The horizontal position of the arm, or at night, the showing of a red light, thus—



constitutes the "on" or "danger" position, and signifies "Stop dead," and do not pass till the arm is lowered or (at night) till the light is changed to green.

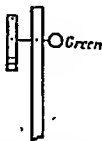
(3) The inclined position of the arm, lowered to an angle of from 45° to 60° below the horizontal, or, at night, the showing of a green light, thus—



constitutes the "off" position, and signifies "Proceed."

B.—FIXED SIGNALS—(contd.)

(4) If allowed by approved special instructions, the arm, when "off," may be vertical, thus—



8. Description of Warning signals, and their indications:—(1) Warning signals (or Warners) are signals intended to warn Engine Drivers of the condition of the block-section ahead.

(2). Except under approved special instructions, the use of Warning signals is confined to interlocked stations.

(3). When a semaphore signal is used as a Warning signal, the arm shall be fish-tailed and it shall be arranged to give two indications, namely, "Proceed with caution" and "All right".

(4). The horizontal position of the fish-tailed arm, or the showing at night of two lights, one at the root of the arm and red, and the other six to seven feet above it and green, constitutes the "Proceed with caution" position, and signifies "Pass by without stopping, but with caution, and be prepared to stop at the next Stop signal or where required."

(5). The inclined position of the arm lowered to an angle of from 45° to 60° below the horizontal, or the showing at night of two lights, one at the root of the arm and green, and the other six to seven feet above it and also green constitutes the "All right" or "off" position and signifies "Proceed: the next block-section ahead is clear."








9. Placing of warning signals:—(1) A Warner may be placed either—

- (a) on a post by itself, at an adequate distance outside the Home signal, or
- (b) on the same post as, but six to seven feet below the arm of, the Outer signal, or
- (c) on the same post as, but six to seven feet below the last Stop signal of a station.

(2). When the Warner is placed below a Stop signal, the variable light of the Stop signal shall take the place of the fixed green light of the Warner, and the mechanical arrangements must be such that the Warner cannot be taken "off" while the Stop signal above it is "on".

10. Significance of various combinations of arms or lights:—The significance of the various combinations of arms or lights described in Rules 7, 8 and 9 is as follows:—

B.—FIXED SIGNALS—(contd.)

Indication.	Meaning.	Explanation.
	(a) Square-ended arm "off"; <i>Single green light.</i>	<i>Proceed.</i>
	(b) Square-ended arm "on"; <i>Single red light.</i>	<i>Danger.</i> Stop dead, and do not pass till the arm is lowered or (at night till the light is changed to green.
	(c) Upper (square) arm "on," lower (fish-tailed) arm horizontal; <i>red over red.</i>	<i>Danger.</i> Stop, and do not pass till the upper arm is lowered or (at night) till the upper light is changed to green.
	(d) Upper (square) arm "off," lower (fish-tailed) arm horizontal; <i>green over red.</i>	<i>Proceed with caution.</i> Proceed cautiously and be prepared to stop at the next Stop signal or where required.
	(e) Upper (square) arm "off," lower (fish-tailed) arm "off"; <i>green over green.</i>	<i>All right.</i> Proceed.
	(f) Single (fish-tailed) arm horizontal; <i>green over red.</i>	<i>Proceed with caution.</i> Proceed cautiously, and be prepared to stop at the next Stop signal or where required.
	(g) Single (fish-tailed) arm "off"; <i>green over green.</i>	<i>All right.</i> Proceed.

Explanation.—The exhibition of a red over green light, or the corresponding position of the arms by day, or the absence of one or both lights, shows that the signal is out of order and should be treated as a Danger Signal, *vide* Rule 314.

11. Kinds of Stop signals for approaching trains.—(1) The Stop signals which control the movement of trains approaching a station are of four kinds, namely, Outer, Home, Main and Track (or Routing) signals.

(2) The Outer signal is a signal fixed at an adequate distance outside the point up to which the line may be obstructed after permission to approach has been sent to the station in rear, or at an adequate distance outside the place where a train usually comes to a stand in accordance with the system of working.

B.—FIXED SIGNALS—(contd.)

(3) The Home signal is the first Stop signal of a station at which an Outer signal is not provided, and the second Stop signal of a station at which an Outer signal is provided.

(4) The Main signal is a signal fixed within station limits, generally near the centre of a station. It may, under approved special instructions, be called the Home signal. It is ordinarily provided with two semaphore arms only, one on either side of the post, in which case the left-hand arm only is applicable to approaching trains. No other arrangement of arms may be used without the sanction of the Government Inspector.

(5) The Track or Routing signal is a special bracketed signal used to indicate to an Engine Driver which of two or more diverging tracks is made for him, when the Home signal is, in consequence of its position, inconvenient for that purpose.

12. Kinds of Stop signals for departing trains.—(1) The Stop signals which control the movement of trains leaving a station are of two kinds, namely, Starting signals and Advanced Starting signals.

(2) Where there is only one Starting signal, it is called the Starting signal or Starter.

(3) Where there are two Starting signals the outermost is the last Stop signal of a station and is called the advanced Starting signal or Advanced Starter, while the other is called the Starting signal or Starter.

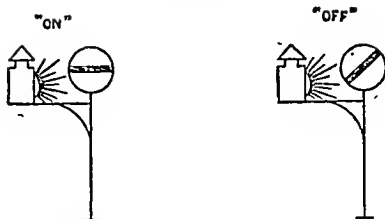
(4) The Starting signal, where only one such signal is provided, or the Advanced Starting signal, where two Starting signals are provided, must be fixed at the limit beyond which no train may pass unless the Engine Driver is given the authority to proceed, which is required by the system of working, and must be fixed outside all connections on the line to which it refers, in all cases in which exceptions are not allowed by approved special instructions.

NOTE.—This sub-rule does not refer to shunting operations.

(5) Where an Advanced Starting signal is provided, the Starting signal must be placed so as to protect the first facing or fouling point on the line to which it refers.

13. Description of the Outer Repeater.—(1) The Outer Repeater is an indicator fixed at an adequate distance outside the Outer signal, for the purpose of advising the Engine Driver whether the Outer signal is "off" or "on".

(2). An Outer Repeater may take the form of a white disc showing a black horizontal bar (signifying "Caution") when the Outer signal is "on" and a black diagonal bar (signifying "Proceed") when the Outer signal is "off", thus:—

B.—FIXED SIGNALS—(contd.)

(3). If used at night, an Outer Repeater must be so illuminated as to make its indications clearly visible.

14. Description of Shunting signals and Calling-on signals.—Shunting signals and Calling-on signals are short auxiliary arms and auxiliary lights placed below the arms of Starters or Advanced Starters and home signals, respectively; and when "off" authorise an Engine Driver to draw ahead although the arm above is "on".

15. Use of Siding, Miniature or Dwarf and Disc signals.—Siding, Miniature or Dwarf and Disc signals are used to control shunting operations in sidings, the movements of trains between sidings and main lines, or between one main line and another. In the case of Siding Miniature or Dwarf signals the "on" or "danger" position is shown in the day time by a short arm in the horizontal position, and at night by a red light. The "off" or "proceed" position is shown in the day time by the arm being lowered and at night by a green light.

In the case of Disc signals the "on" or "danger" position is shown in the day time by a red disc and at night by a red light.

The "proceed" or "off" position is shown in the day time by the disc being turned "off" and at night by a green light.

Explanation—Point Indicators are not signals, but are appliances fitted to and working with, points, to indicate by day or by night the position in which the points are set.

16. Co-acting signals.—(1) Co-acting signals are duplicate signals fixed vertically below ordinary signals, and are provided where, in consequence of the great height of the signal post, or of there being an overbridge or other obstacle, the main arm or light is not in view of the Engine Driver during the whole time that he is approaching it.

(2) Co-acting signals must be fitted at such height, that either the main arm or light or the co-acting arm or light may always be visible.

B.—FIXED SIGNALS—(contd.)

17. Description of Banner Flag.—A Banner Flag is a temporary fixed danger signal consisting of a red cloth supported at each end on a post and stretched across the line to which it refers.

18. Normal position of fixed signals.—(1) The normal position of every fixed signal, except Calling-on signals, shall be "danger".

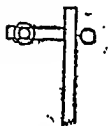
(2). Every fixed signal shall be so constructed that in case of failure of any part of its connections, it shall remain at, or return to its normal position.

19. Position of signal arms.—Signal arms must be placed on the left-hand side of the post, as seen by the Driver of any approaching train.

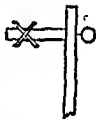
20. Painting of signal arms.—(1) Signal arms must be painted red with a white bar on the side facing trains to which they refer, and white with a black bar on the other side.

(2) On Warning signal arms the said bars must be parallel with the notching.

21. Rings for signal arms.—Signal arms referring to lines other than passenger lines must, at places where distinction between signals for passenger lines and signals for other lines is necessary, be distinguished by rings, thus—



22. Signals out of use.—When semaphore signals are not in use the arms must remain fixed in the "on" position and must be distinguished by having two crossed bars on them, each bar being not less than 3' 6" long and 4" wide thus—



23. Position of fixed signals.—Fixed signals shall be fixed on the side of the line on which they can be seen by Drivers of approaching trains, but the left-hand side of the track is to be preferred unless the sighting is greatly interfered with.

24. Bracket-posts and signal posts when to be used.—Unless otherwise permitted by approved special instructions—

(a) where two or more lines diverge, the signals must be fixed on a bracket-post; and

(b) where two or more lines converge, the signals must be fixed on separate posts or, where this is not practicable, then on a bracket post;

Provided that, where the number of signals is considerable, they may be fixed on separate posts or dolls carried on a signal-bridge provided for the purpose.

B.—FIXED SIGNALS—(contd).

25. Placing of more than one signal on the same post.—Not more than one signal referring to trains moving in the same direction (whether on the same track or on separate tracks) shall be placed on the same post, unless—

- (a) there be only two signals on the post and the lower signal is a Warner fixed from six to seven feet below the other signal, or
- (b) the lower signal is a Co-acting signal or Calling-on signal fixed at least fifteen feet below the next signal, or
- (c) The sanction of the Government Inspector has been obtained.

26. Relation of signals to particular roads.—(1) In the case of all bracket or bridge signals the left-hand signal shall be read as referring to the left-hand road and the second signal from the left shall be read as referring to the next road from the left, and so on.

(2) Where, with the sanction of the Government Inspector under Rule 25, clause (c), two or more signals are placed on the same post, the top arm shall be read as referring to the next road from the left, and so on.

27. Distinction between signals.—Signals on brackets and bridges shall be distinguished as much as possible by grouping, and by making the more important signals higher than the less important signals.

28. Back-lights.—(1) Every fixed signal, the light of which cannot be seen from the point from which the signal is worked, must be provided with a back-light or tell-tale, by which the Station Master may see whether the light is burning or not.

(2) Back-lights of signals must show a small white light when "on" and no light at all in any other position.

(3) When a warner is used by itself, its fixed green light must show a white back-light.

C.—HAND SIGNALS.

29. Hand signals how made.—A Hand signal shall be made—

by day, by showing a flag or hand, and by night, by showing a light.

30. Stop signal how given.—The stop signal shall be given—by day,—

(a) by showing a red flag, thus—



C.—HAND SIGNALS—(contd.)

or

- (b) in the absence of flags, by raising both arms with the hands above the head, thus—



and, by night,—

- (i) by showing a red light; or

- (ii) in the absence of a red light, by violently waving a white light.

31. Proceed with caution signal when used and how given.—The Proceed with caution signal must be used when it is intended that a train should proceed slowly, and shall be given—

by day,—

- (a) by waving a green flag vertically, thus—



or

- (b) in the absence of flags, by waving one arm in a similar manner, thus—



and,

by night, by similarly waving a green light.

32. Proceed signal how given.—The proceed signal shall be given—
by day,—

(a) by holding a green flag steadily,—thus,



or

(b) in the absence of flags, by holding out one arm steadily, thus—



and, by night, by holding a green light steadily.

33. Signals for shunting.—In shunting operations, signals shall be given as follows:—

(1) *To move away from the person signalling*, a green flag or green light moved slowly up and down.

- (2) *To move towards* the person signalling, a green flag or green light moved from side to side across the body.
- (3) *To slow down*, the above signals to be displayed slower and slower until the danger signal is given.

33. **A.**—In shunting operations the following signals may during daylight be substituted for signals by flag:

- (1) *To move away from* the person signalling, throw the arm nearer to the driver in the forward direction.
- (2) *To move towards* the person signalling, throw the arm nearer to the driver across the body in the direction in which the train is to move.
- (3) *To slow down*, the above signals to be displayed slower and slower until it is desired to stop, when both arms should be raised, with the hands above the head.
- (4) *To show that part of the train is uncoupled*, place the hands together in front of the body and separate them smartly (this signal, when necessary, is to be given before the movement signal).

D.—DETONATING SIGNALS.

34. **Detonating signals defined.**—“Detonating” signals (otherwise known as “Fog” signals) are appliances placed on the rails so as to explode with a loud report when an engine passes over them, for the purpose of attracting the attention of Engine Drivers.

35. **Stocks of detonators.**—(1) All Station Masters, Guards, Engine Drivers, Gangers and Gatemen, and all other railway servants on whom this duty is laid by the Railway Administration, must keep a stock of detonators.

(2). Each Railway Administration shall be responsible for the supply, renewal periodical testing and safe custody of such detonators, and for ensuring that their use is properly understood.

36. **Placing of detonators in thick or foggy weather.**—In thick or foggy weather, whenever it is necessary to indicate to the Driver of an approaching train the locality of a signal, two detonators must be placed on the line, by a railway servant appointed by the Station Master in this behalf, about ten yards apart and at least one hundred yards outside the outermost signal of the station.

37. **Placing of detonators in case of obstruction.**—(1) Whenever, in consequence of an obstruction of a line, it is necessary for a railway servant to show hand danger signals at some place short of such obstruction, he shall put on the line one detonator, half-way out to such place, and three detonators, about ten yards apart, at such place.

(2). If the said railway servant is recalled before the obstruction is removed, he must leave down three detonators and must on his way back pick up the intermediate detonator.

38. Placing of detonators on a mixed gauge.—In all cases where the use of detonators is necessary under these rules, on a mixed gauge, detonators must be placed on one rail of each gauge, or on the rail common to both.

39. Securing of detonators on the line.—Detonators must be placed on the line with the label or brand upwards, and must be secured by bending the clasp round the upper flange of the rail.

40. Renewal of detonators on the line.—Every railway servant placing detonators on the line must see that they are, when necessary, renewed immediately after a train has passed over them.

E.—SIGNALS AT STATIONS.

41. Obligation to provide fixed signals at stations.—The fixed signals prescribed in this sub-chapter shall be provided at every station except—

- (a) stations between which trains are worked on the One Engine Only system mentioned in Chapter XI, and
- (b) stations which are exempted from this rule by approved special instructions.

42. Inspection of fixed signals.—Fixed signals shall not be brought into use until they have been passed by the Government Inspector as being sufficient to secure the safe working of trains.

43. Minimum equipment of fixed signals.—The minimum equipment of fixed signals to be provided for each direction shall be as follows:—

- (a) at a Class A Station—
 - a Warning signal,
 - a Home signal, and
 - a Starting signal,
- (b) at a Class B station—
 - an Outer signal, and
 - a Home signal; and
- (c) at a Class C station—
 - a Warning signal, and
 - a Home signal.

44. Additional fixed signals at Class B stations.—Besides the minimum equipment prescribed in Rule 43, the following fixed signals must be provided at Class B stations, namely—

- (a) on a double line—a Starting signal for each direction;
- (b) on both a double and a single line—if trains run through at high speed without stopping, a Warning signal, to be fixed below the arm of the Outer signal; and
- (c) on a single line worked on the Absolute Block System—if the obstru

E.—SIGNALS AT STATIONS—(contd.)

ting of the line outside the Home Signal or, if there is no Home Signal, the outermost facing points in the direction of an approaching train is permitted under Rule 110, a Shunting Board (bearing the words "shunting limit" on the side which faces the station, and fitted with a lamp showing a white light in both directions to mark its position by night) or an advanced starter, to be fixed at a distance not exceeding two hundred yards from the facing points, to mark the extreme limit up to which such obstructing may be permitted.

45. Exceptions to Rules 43 and 44.—Notwithstanding anything contained in Rule 43 or Rule 44,—

- (a) if the station is already provided with an Outer signal and a Main signal the latter may remain in use instead of a Home signal, until the station is interlocked, or until the Government Inspector orders otherwise. At such stations on a double line, trains shall be worked in accordance with approved special instructions;
- (b) if the station has only one pair of points on the main line, signals shall be erected, and the station shall be worked, in accordance with approved special instructions;
- (c) on any railway where traffic is light and speeds are slow, all signals, except one Stop signal at each station for each direction, may, under the special sanction of the Government Inspector, be dispensed with, the said Stop signal being placed at such point within or outside the station-yard as he may approve, and trains being worked in accordance with approved special instructions; and
- (d) on any railway having very light traffic worked by day only, all or any signals may, with the special sanction of the Government Inspector, be dispensed with, trains being worked in accordance with approved special instructions.

46. Additional fixed signals at stations generally.—In addition to the equipment prescribed in Rules 43 and 44, such other fixed signals (if any) must be provided at every station as may be necessary for the safe working of trains.

47. Signals at Class D Stations.—At a Class D station a train may be stopped either by hand signals or by a fixed Stop signal for each direction.

F.—SIGNALS AT GATES.

48. Signals at gates.—Unless exempted under approved special instructions, every gate which closes across the line at a level-crossing must, except when interlocked with station signals, be provided with semaphore signals fixed at an adequate distance from the gate and showing Stop signals both up and down the line when the gates are open for the passage of road traffic.

G.—WORKING OF FIXED SIGNALS.

49. Fixed signals generally.—(1) Subject to the provisions of Rule 18, fixed signals must always be kept "on" (that is, at "danger") except when taken "off" (that is lowered) to allow a train to pass.

(2) No fixed signals shall be taken "off" without the permission of the Station Master.

(3) The Station Master shall not give permission to take signals "off" to admit a train, until—

(a) all facing points over which the train will pass are correctly set and secured.

(b) all trailing points over which the train will pass are correctly set, and

(c) the line over which the train is to pass is clear and free from obstructions.

(4) Except in cases of emergency, a signal which has been taken "off" for the passage of a train shall not be placed "on" until the whole of the train which it controls has passed it or, in the case of a Main signal, has arrived at the place at which trains usually come to a stand.

(5) At stations on a single line, except under special instructions where the interlocking or the lay-out of the yard renders a contrary procedure safe, when two or more trains are approaching simultaneously from any direction, the signals for one train only at a time may be taken "off," all other signals being kept "on," until the train for which the signals have been taken "off" has come to a stand at the station or has cleared the station.

50. Home signals.—(1) When a train is approaching a Home signal otherwise than at a terminal station, the signal shall not be taken "off" until the train has first been brought to a stand outside the signal, unless—

(a) (on a double line) the line is clear for an adequate distance beyond the Starting signal; or

(b) (on a single line) the line is clear for an adequate distance beyond the trailing points, or up to the farthest Outer signal, whichever distance is less, or, if allowed by approved special instructions, for an adequate distance beyond the place at which the train is required to come to a stand.

(2) The adequate distance referred to in sub-rule (1) shall be fixed by special instructions but shall never be less than two hundred yards without the sanction of the Government Inspector.

51. The Outer signal.—(1) The outer signal shall never be taken "off" to admit a train which has not been brought to a stand outside it, unless the line on which the train is to be received in the stations is clear, in the case of a double line, up to the Starting signal, and, in the case of a single line, for an adequate distance beyond the first facing points.

G.—WORKING OF FIXED SIGNALS—(contd.)

(2) When a train which is booked to run through has to be stopped out of a course at a station where Warners are not provided, the Outer signal shall not be taken "off," until the train has been brought to a stand outside it.

(3) The Warners shall never be taken "off" for a train that is booked to stop, or for a train that has to be stopped out of course.

52. Calling-on signal.—A Calling-on signal referring to a running train shall not be placed to "off," until the train has been brought to a stand at the Signal below which the Calling-on signal is fixed.

53. Shunting.—(1) The Outer, Home and Main signals and the outermost Starting signal of a station shall not be taken "off" for shunting purposes.

(2) At stations where advanced starting signals are provided, starting signals must be taken "off" for shunting purposes, except where the arrangement of the interlocking interferes with this practice, in which case hand signals must be used where miniature signals or shunting arms are not provided.

H.—DEFECTIVE SIGNALS.

54. Duties of Station Master.—As soon as the Station Master becomes aware that any signal has become defective or has ceased to work properly, he shall—

- (a) take measures, either by disconnecting the wire or by other means, to place the signal "on," if it is not already in that position;
- (b) depute one or more competent railway servants, with such hand signals and detonators as may be required, to give signals at the place where the defective signal is situated until the Station Master is satisfied that such signal has been put into proper working order;
- (c) if possible, advise the station in rear, in order that the Drivers of all approaching trains may be warned; and
- (d) report the occurrence to the person who is responsible for the upkeep of the signal.

55. Use of other Signals.—(1) If a Warner is out of order it must be kept in the horizontal position, and Engine Driver will work to the other signals.

(2) If a Warner on a post by itself is out of order and cannot be kept in the horizontal position, a red hand signal must be shown at the foot of the signal post, and by night the fixed green light must be extinguished; and trains, after having first been brought to a stand, may then be hand-signalled past.

(3) If a Home or Main signal, or a Starter or Advanced Starter, is out of order the railway servant stationed at the signal must show hand signals in accordance with instructions from the Station Master.

(4) If the Outer signal is out of order, the railway servant stationed at it—

- (a) must repeat by hand signal the indication given by the Home signal, or
- (b) if the Home signal is also out of order, must repeat the indication given by the hand signal at the Home signal.

56. Intimation to station when defect remedied.—As soon as a defective signal has been put into good working order, the Station Master must intimate the fact to the station which was advised of its being defective.

CHAPTER III.

WORKING OF TRAINS GENERALLY.

57. Standard Time.—The working of trains between stations shall be regulated by the standard time prescribed by the Governor-General in council, which must be sent daily to all the principle stations on the railway.

58. Adherence to advertised time.—No passenger train or mixed train shall be despatched from a station before the advertised time.

59. Notice of running.—No train shall be allowed to run unless previous notice has been given, when practicable, to all stations concerned.

60. Permission to approach and authority to proceed.—(1) No person other than the Station Master may ask for or give permission to approach or give authority to proceed.

(2) An authority to proceed given to a running train shall lapse as soon as the last vehicle of the train has passed—

(a) on a double line, inside the Home Signal; or

(b) on a single line—

(i) inside the Home signal; or

(ii) Where there is no Home Signal, inside the facing points.

61. Pushing engine.—(1) No engine shall be allowed, outside station limits, to push any train, except in accordance with special instructions and at a speed not exceeding fifteen miles an hour.

(2) Sub-rule (1) shall not apply to an engine assisting in rear of a train.

62. Engine running tender foremost.—(1) A passenger train or a mixed train shall not be drawn outside station limits by an engine running tender foremost, except—

(a) under a written order issued by the authorized officer, or

(b) in the case of unavoidable necessity, to be established by the Engine Driver.

(c) When any such train is so drawn, the speed shall not exceed fifteen miles an hour, or such higher speed, not exceeding twenty-five miles an hour, may be authorized by approved special instructions.

63. Guards and brake-vans.—(1) Except under special instructions, no engine with vehicles attached shall be despatched from any station without one or more Guards and one or more brake-vans or hand braked vehicles.

(2) Every guard must, except under special circumstances, ride in his own brake-van or braked vehicle.

(3) Unless it be otherwise directed by special instructions, one brake-van must be attached to the rear of the train.

Provided that reserved carriages or other vehicles may, under special instructions be placed in rear of such van.

64. Means of communication with passengers.—No passenger train or mixed train shall be despatched from any station, unless it be provided with means by which a Guard can communicate with or get access to, every passenger carriage in the train, or the Guard can be communicated with from every passenger carriage in the train by means of an apparatus provided for this purpose.

Note.—In the case of a mixed train when an unbraked vehicle intervenes between the engine and any vacuum-braked coaching stock, or in the case of a passenger or mixed train worked with hand brakes for want of the required amount of vacuum in the rear brake-van, this rule will not apply.

65. Loading.—(1) No waggon or truck shall be so loaded as to exceed the maximum gross load on the axles, fixed under Section 53, sub-Section (3), of the Indian Railways Act IX of 1890, or such less load (if any) as may have been prescribed by the Railway Administration.

(2) Except under approved special instructions, no vehicles shall be so loaded as to exceed the maximum moving dimensions, prescribed from time to time by the Railway Board.

66. Couplings.—No vehicle that is not furnished with screw couplings or with a central buffer coupling of approved pattern shall be attached to a passenger or mixed train.

67. Dangerous vehicles.—(1) No vehicle which has been off the line shall be allowed to run between stations, until it has been examined and passed by a competent Carriage and Wagon Examiner:

Provided that, in case of a derailment between stations, the Engine Driver may, if he considers it safe to do so, take slowly to the next station a vehicle that has been off the line.

(2) If a Guard or Station Master has reason to apprehend danger from the condition of any vehicle on a train before it can be inspected by a Carriage and Wagon Examiner, the Engine Driver shall be consulted, and, if he so requires, the vehicle shall be detached from the train.

68. Travelling cranes.—When attaching a travelling crane to a train, the Guard in charge of the train must see that the Jib is properly lowered and

secured, and that the crane is, if practicable, so placed that the jib will point towards the rear.

69. Dummy truck.—When the jib of a travelling crane projects beyond its truck, or when the load in a truck projects to an unsafe extent beyond the end of the truck, an additional truck shall be attached to act as a dummy.

70. Private engines and vehicles.—No engine or other vehicle, the property of a private owner, shall be allowed to enter upon the railway, except in accordance with special instructions.

71. Train lights.—At night, and in thick or foggy weather,—

(1) no train shall be worked outside station limits, unless it has—

(a) the head-lights (at least two in number), prescribed by the Railway Administration; and

(b) in the case of an engine with vehicles attached, at least one red tail-light and two side-lights showing red towards the rear and white towards the engine; and

(c) in the case of a single engine without vehicles attached, at least one red tail light; and

(d) in the case of two or more engines coupled together without vehicles attached, at least one red-light affixed to the rear engine.

Exception.—Where trains may run in the same direction on parallel lines, the side lights may be arranged in accordance with special instructions;

(2) no engine shall be employed in shunting within station limits or in a siding, unless it has the head-lights and tail-lights prescribed by the Railway Administration; and

(3) when a train has been shunted for a following train to pass, the tail-light and side lights must be dealt with in accordance with instructions given by the Railway Administration.

72. Tail-board or tail-lamp.—In order to indicate by day to the staff that a train is complete, the last vehicle must be distinguished by affixing to the rear of it either a tail-board, a tail-lamp, a red flag or such other device as may be authorised by special instructions.

73. Limits of speed generally.—Every train must be run on each section of the line within the limits of speed sanctioned for that section by special instructions.

NOTE.—The sectional speed sanctioned shall be shewn in the Working Time-table, a copy of which shall be supplied on issue to the Government Inspector.

74. Limit of speed through facing points.—No train shall be run through facing points at a speed exceeding ten miles an hour, or such lower rate as may be prescribed by special instructions.—

Provided that, if the points are interlocked with a fixed signal, or are locked in a manner approved by the Government Inspector, trains may run over them at such speed as may approved by the Government Inspector.

75. Protection and working of points.—Where there are points in the main line at a place which is not a station, provision for the protection of such points, by signals or otherwise, and for working them, shall be made in order to secure the safe working of trains, to the satisfaction of the Government Inspector.

76. Care of facing points when train runs through station without stopping.—When a train is to run, without stopping, through any station that is not interlocked, the Station Master of that station, or some railway servant appointed in this behalf by special instructions, must proceed to the facing points and satisfy himself that all facing points, over which the train will pass, are properly set and locked.

77. Working of ballast trains.—A ballast train may be worked only with the permission of the Station Master on each side and in accordance with special instructions.

78. Warning before moving a Ballast train.—Before a ballast train is moved, the Engine Driver must give two clear whistles at an interval of half a minute, as a warning to the coolies that the train is about to move.

79. Protection of Ballast train when stabled.—When a ballast train with coolies is stabled at a station it must be protected in the following manner;—

(1) the Guard in charge of the train must satisfy himself that all necessary points connected with the siding on which the train is stabled, have been correctly set against the train by the station staff, and must then inform the Station Master in writing that this has been done. Then until the train is ready to start.

(a) if the station is not interlocked—the Station Master will secure with his own padlocks the points connected with the siding on which the train is stabled in the presence of the Guard and personally hand over the keys to the Guard who will give a receipt for them and keep them in his possession; or

(b) if the station is interlocked—the Station Master will tie a red flag on the lever-handle working the points, in the presence of the Guard.

(2) When under clause 1 (b) a red flag has been affixed, the Station Master must take steps to ensure that the lever is not worked until he has removed the flag in the presence of the Guard.

(3) When the train is ready to leave the siding, the Guard will inform the Station Master in writing and the Station Master having received back the keys from the Guard and returned the receipt for the same, will arrange for the correct setting of the points.

80. Control of shunting.—Shunting operations shall be controlled by Semaphore signals, Shunting signals, Siding signals, Miniature signals, Dwarf signals, Disc signals or Hand signals, or by verbal directions, as occasion may require.

81. Moving of vehicles so as to obstruct running road.—No vehicle shall be moved so as to foul or obstruct any running road, unless the previous sanction of the Station Master has been obtained.

82. Shunting on steep gradients.—When any vehicle is being shunted on a steep gradient, the railway servant in charge of the operation must see that a sufficient number of brakes are put on, that sprags or handscotches are used when necessary, and that all necessary precautions are taken to prevent the vehicle getting out of control.

83. Loose shunting.—Loose shunting of, or against, vehicles containing passengers, explosives or live-stock is prohibited.

84. Double lines.—Where there is a double line, every train must, unless special instructions otherwise provide, be run on the left-hand line:

Provided that, if one of the lines should be blocked so as to necessitate single line working, such special instructions as may be necessary shall immediately be issued for establishing single-line working.

85. Working in case of accident or failure of electric connections.—In case of accident to the line or to any train, or of failure or interruption of electric connections, trains must be worked between stations in accordance with special instructions.

TRAINS STOPPED BETWEEN STATIONS, BY ACCIDENT, FAILURE OR OBSTRUCTION.

86. Train stopped between stations.—When a train is stopped between stations, the Guard in charge of the train must, unless the stoppage will only be one for a few minutes, immediately ascertain the cause, and if the stoppage is other than incidental or authorised, and if he finds that through accident or for any other reason the train cannot proceed, the following action shall be taken, namely:—

(1) the said Guard must immediately either himself go back or send a qualified person back, to protect the train.

(2) the person so going back to protect the train must plainly show his hand Danger signal to stop any approaching train, and in addition to his hand signal must take detonators (to be used by day as well as by night), and must place them upon the line on which the stoppage has occurred, as follows, namely;

- (a) one detonator, one quarter of a mile from his train to be placed on the way out; and
- (b) three detonators, ten yards apart, not less than half a mile from his train, or at such distance as has been fixed by special

TRAINS STOPPED BETWEEN STATIONS—(contd.)

and must also continue to show his hand Danger signal, to stop any approaching train, until he is recalled;

(3) when such person is recalled, he must leave down three detonators, and must on his way back pick up the intermediate detonator;

(4) The Engine Driver must at once show a Danger signal to the front, and must proceed to protect the train in front in the manner prescribed in clauses (2) and (3), either by going himself or by sending his Firemen or some other qualified person;

(5) if the stoppage has occurred on a double line the Danger signal herein before referred to must be shown on both lines, but if it be subsequently found that the unoccupied line is not obstructed the said Danger signal may be removed.

(6) If the stoppage has occurred on one of two or more parallel tracks, whether of the same or different gauge, the danger signals hereinbefore referred to must be shown on all the lines. If it is found that the unoccupied line or lines are also obstructed, the persons deputed to protect the train under sub-clauses (1), (2), (3), (4), and (5) of this rule must, while carrying out the duties therein laid down, protect in the similar manner the occupied line or lines obstructed; but, if it be subsequently found that the unoccupied line or lines are not obstructed the said Danger signal may be removed from such lines as are not obstructed.

87. Sending advice of accident or breakdown.—If the engine is for any reason unable to proceed, the guard in charge of the train shall send advice to the nearest station, stating the nature and cause of the accident, and, if assistance has been asked for, he shall not allow the engine or any portion of his train to be moved until such assistance arrives, provided that if the train is subsequently able to move, it may do so at walking pace, but not unless a man has been sent with hand signals and detonators to protect the train, such man keeping at least a quarter of a mile in advance of the train, the other end of the train being protected in a similar manner.

88. Light engine stopped on line.—If any light engine should, while on the line outside station limits, be unable to proceed, the Engine Driver must see that the precautions prescribed by Rule 86 are taken for the protection of the Engine, both in front and rear, employing the Fireman or some other competent person to assist him.

89. Train Parting.—(1) If any portion of a train should, while in motion, become detached,—

(a) the Engine Driver must use his judgment to keep the front portion in motion if possible, until the rear portion has been brought to a stand, so as to avoid the chance of a collision between the two portions; and

TRAINS STOPPED BETWEEN STATIONS—(contd.)

(b) the Guard or Guards in the rear portion must promptly apply their brakes and do all they can to prevent a collision with the front portion.

(2) As soon as the rear portion of the train has been brought to a stand, the Guard in charge of the train must protect that portion, in accordance with Rule 86, both in front and rear.

90. Portion of train left on line.—(1) When a train, stopped between stations, has to be divided in consequence of an accident or the inability of the engine to take the whole train forward, the Guard in charge of the train must before uncoupling, put down the brakes, and must, if necessary, otherwise carefully secure the rear portion of the train to ensure its remaining stationary.

(2) if the engine is capable of proceeding either with or without vehicles, the said Guard shall give written permission to the Engine Driver to uncouple and proceed to the next station, and may, if he thinks fit, give him written instructions to return on the same line.

(3) When the said Guard has taken action under sub-rule (2), he must immediately take steps to protect the rear portion of his train in accordance with Rule 86.

(4) At night, or in thick or foggy weather as soon as the engine, whether with or without vehicles, is drawn forward the said Guard must see that a light is shown on the front vehicle of the rear portion of the train.

(5) When the front portion of the train is taken forward, the Fireman, or, if there are two Guards with the train, the second Guard must, if it is practicable and safe to do so, ride upon the last vehicle of the said front portion of the train until it reaches the next station; but no tail-lamp or tail-board shall be placed on it.

(6) On entering a station with the knowledge that the block section behind is obstructed, the first duty of the Driver, when the train consists of the engine only, is to instantly warn the Station Master on duty of this fact, and when vehicles are attached and a Guard accompanies, this first duty devolves upon the Engine Driver and Guard jointly.

(7) When under the written instructions referred to in sub-rule (2), the engine is to be brought back, the Guard in charge of the train must, until the arrival of the engine, continue to take the precautions prescribed in Rule 86, for the protection in rear of the portion of the train left on the line, and shall not permit a following train to move any of the vehicles under his charge.

(8) The engine Driver shall not bring his train back on the same line, unless he has received written instructions, under sub-rule (2), from the Guard in charge of the train to do so.

(9) If there is a double line, the Engine Driver may, under instructions from the Station Master, take the train back on the proper line, according to the sy-

of working, until he can cross on to the line on which he has left the rest of his train, and may then proceed by that line; and after attaching the engine, must work the train to the station to which he is directed.

(10) When moving in the wrong direction on a double line, under the written instructions referred to in sub-rule (2), the Engine Driver must proceed cautiously, travel at reduced speed, and make frequent use of the engine whistle.

CHAPTER IV.

SYSTEM OF WORKING.

91. **System of working.**—(1) All trains working between stations must be worked on one or other of the following systems, namely:—

(a) Absolute Block; (b) Section Clear; (c) Line Clear and Caution Message; (d) Following Trains; (e) Train-staff and Ticket; (f) Pilot Guard; or (g) One engine only.

(2) The Absolute Block system alone shall be used on every railway except any railway or portion of a railway on which the Railway Board may expressly sanction the use of any other system mentioned in sub-rule (1).

CHAPTER V.

THE ABSOLUTE BLOCK SYSTEM.

92. **Essentials of the Absolute Block System.**—(1) Where trains are worked on the Absolute Block system:—

- (a) no train shall be allowed to leave a station unless permission to approach has been received from the station ahead; and
- (b) on double lines such permission shall not be given unless the line is clear not only up to the first Stop signal at the station at which such permission is given but also for an adequate distance beyond it;
- (c) on single lines the permission referred to in clause (a) shall not be given unless the line is clear of trains running in the same direction, not only up to the first Stop signal at the station at which such permission is given, but also for an adequate distance beyond it, and
 - (i) is clear of trains running in the direction towards the station to which such permission is given, or
 - (ii) will be clear after the complete arrival of a train approaching the station to which such permission is given.

(2) The permission referred to in clause (c) (ii) shall be conditional and be valid only after the section has been cleared by the complete arrival of the approaching train. Such conditional permission shall be given only under special instructions.

(3) The distance referred to in clause (1) (b) and clause (1) (c) shall not be less than one-quarter of a mile unless otherwise directed by special instructions.

CLASS A STATIONS—DOUBLE LINES.

93. Conditions under which permission to approach may be given.—The line shall not be considered clear, and permission to approach shall not be given, unless—

- (a) the whole of the last preceding train has arrived,
- (b) all signals have been put back to "on" behind the said train.
- (c) the line on which it is intended to receive the incoming train is clear up to the Starting signal, and
- (d) all points have been correctly set for the admission of the train on the said line.

94. Obstruction when train is approaching.—When permission to approach has been given, no obstruction shall be permitted outside the Home signal, or, on the line on which it is intended to admit the train, up to the Starting signal.

95. Obstruction outside Home signal, when block section is clear.—If, when the block-section is clear, it becomes necessary to obstruct the line outside the Home signal, the line must be blocked back.

96. Obstruction outside last Stop signal, when block-section is clear.—If, when the block-section is clear, it becomes necessary to obstruct the line outside the last Stop signal.

- (a) either a shunting-arm (which may for this purpose be provided on the post of the last Stop signal) must be taken "off", or a written shunting order must be given to Engine Driver, and
- (b) the line must be blocked forward.

97. Obstruction when block-section is occupied by train travelling away from the station.—If the block-section is occupied by a train travelling in the section away from the station at which shunting operations have to be performed, such shunting shall be permitted only under either of the conditions prescribed in clause (a) of Rule 96; and as soon as intimation has been received that the train has arrived at the station ahead, the line must be blocked forward, if it is still obstructed by the shunting.

98. Thick or foggy weather.—In thick or foggy weather, a train waiting for an authority to proceed shall not be allowed to draw out to a Starting signal in an advanced position, or up to an Advanced Starting signal.

CLASS A STATIONS.—SINGLE LINES.

99. Conditions under which permission to approach may be given.—The line shall not be considered clear, and permission to approach shall not be given, unless—

- (a) the whole of the last preceding train has arrived,
- (b) all signals have been put back to "on" behind the said train,
- (c) the line on which it is intended to receive the in-coming train is clear up to the Starting signal, and
- (d) all points have been correctly set for the admission of the train on the said line.

100. Obstruction when train is approaching.—When permission to approach has been given, no obstruction shall be permitted outside the Home signal, or, on the line on which it is intended to admit the train, up to the Starting signal, which controls the train.

101. Shunting.—The block-section shall not be obstructed for shunting purposes, unless—

- (a) the Station Master has received a permission to approach from the station Master at the opposite end of the section, or
- (b) the section has been blocked back, or is occupied by a train travelling away from the station at which the shunting is to be performed and
- (c) the Engine Driver or other person in charge of the shunting operations has received distinct orders from the Station Master to shunt in a manner directed by special instructions.

102. Thick or foggy weather.—In thick or foggy weather, a train waiting for an authority to proceed shall not be allowed to draw out to a Starting signal in an advanced position, or upto an Advanced Starting signal.

CLASS B STATIONS.—DOUBLE LINES.

103. Conditions under which permission to approach may be given.—The line shall not be considered clear, and permission to approach shall not be given, unless—

- (a) the whole of the last preceding train has passed inside the Home signal
- (b) the Home and Outer signals have been put back to "on" behind the said train, and
- (c) the line is clear up to the Home signal.

104. Obstruction when train is approaching.—When permission to approach has been given, no obstruction of the line outside the home signal shall be permitted; but shunting between the Home signal and the last Stop signal of the station may go on continuously, provided the necessary signals are kept "on".

CLASS B STATIONS—DOUBLE LINES—(contd.)

105. Obstructions outside Home signal when block section is clear.—If, when the block-section is clear, it becomes necessary to obstruct the line outside the Home signal, the line must be blocked back.

106. Obstruction outside last Stop signal, when block-section is clear. If when the block-section is clear, it becomes necessary to obstruct the line outside the last Stop signal,—

- (a) either a shunting-arm (which may for this purpose be provided on the post of the last Stop signal) must be taken "off," or a written shunting order must be given to the Engine Driver, and
- (b) the line must be blocked forward.

107. Obstruction when block-section is occupied by train travelling-away from the station.—If the block-section is occupied by a train travelling in the section away from the station at which shunting operations have to be performed, such shunting shall be permitted only under either of the conditions prescribed in clause (a) of Rule 106; and, as soon as intimation has been received that the train has arrived at the station ahead, the line must be blocked forward, if it is still obstructed by the shunting.

108. Thick or foggy weather.—In thick or foggy weather, a train waiting for an authority to proceed shall not be allowed to draw out to a Starting signal in an advanced position, or up to an Advanced Starting signal.

CLASS B STATIONS—SINGLE LINES.

109. Conditions under which permission to approach may be given.—The line shall not be considered clear, and permission to approach shall not be given, unless—

- (a) The whole of the last preceding train has passed within the Home signal, or, in the case of a Main signal, has arrived at the place at which trains usually come to a stand,
- (b) the Home (or Main) signal has been put "on" and
- (c) the line is clear—
 - (i) to the Shunting Board or Advanced Starter (if any), at that end of the station nearest the expected train, or
 - (ii) to the Home signal, if there is no shunting Board or Advanced Starter,
 - (iii) to the outer most facing points, if there is no Shunting Board or Advanced Starter and no Home signal.

110. Obstruction in the face of an approaching train.—Obstructing the line outside the Home Signal, or the outermost facing points if there is no Home Signal, shall only be permitted when a shunting board or an advanced starter is provided in accordance with Rule 44, sub rule (c) and under special

CLASS B STATION—SINGLE LINES—(contd.)

instructions which take into consideration the speed, weight and brake power of trains, the gradients, the position of the outer signal and the distance from which that signal can be seen by the driver of an approaching train.

111. Obstruction within station section.—If the necessary signals are kept "on" shunting may be carried on either:—

- (a) between shunting boards or advanced starters subject to the provisions of General Rule 110, or
- (b) between the Home Signals, if there are no shunting boards or starters, or
- (c) between the outermost facing points, if there are no Home or Starting Signals or shunting boards.

112. Obstruction outside station section.—Obstructing the line between the station section and the Outer signal shall not be permitted, unless a railway servant specially appointed in this behalf by the Station Master, is in charge of the operation, and unless—

- (a) the block section into which the shunting is to take place is clear of an approaching train, or
- (b) If an approaching train has arrived at the Outer signal, the Station Master has personally satisfied himself that the train has been brought to a dead stand at that signal:

Provided that the line may not be obstructed under clause (b) in thick or foggy weather, or in any case unless authorised by special instructions.

113. Obstruction outside the Outer signal.—Obstructing the line outside the Outer signal is prohibited, unless the line has been blocked back.

CLASS C STATION.—DOUBLE & SINGLE LINES.

114. Conditions under which permission to approach may be given.—The line shall not be considered clear, and permission to approach shall not be given, unless—

- (a) the whole of the last preceding train has passed at least a quarter of a mile beyond the Home signal and is continuing its journey, and
- (b) the Hom and Warning signals have been put back to the "on" position.

CHAPTER VI.

THE SECTION CLEAR SYSTEM.

115. Essentials and application of the Section Clear system.—(1) Where trains are worked on the Section Clear system—

- (a) no train shall be allowed to leave a station unless permission to approach has been received from the station ahead; and

(b) such permission shall not be given unless the line is clear up to the first Stop signal of that station.

(2) The said system is applicable only to Class B stations; and to single lines only, unless otherwise authorized by approved special instructions.

CLASS B STATIONS.—SINGLE LINES.

116. Conditions under which permission to approach may be given.—The line shall not be considered clear, and permission to approach shall not be given, unless—

- (a) the whole of the last preceding train has either passed inside the facing points or arrived at the place at which trains usually come to a stand,
- (b) the Outer signal has been put back to "on" behind the said train, and
- (c) the line is clear up to the Outer signal.

117. Obstruction between the Outer signals.—Shunting shall not be carried on between the Outer signal, unless—

- (a) the said signals are kept "on", and
- (b) after permission to approach has been given for a train, the line between the facing points and the Outer signal, in the direction from which the train will approach, is cleared not less than fifteen minutes before the expected arrival of the train, and is kept clear until the train has arrived or until it has been brought to a stand at the Outer signal.

(2) Subject to the provisions of clause (b) of sub-rule (1), obstructing the line between the facing points and the Outer signal, in face of an approaching train after intimation has been received that such train has entered the block-section, is prohibited, unless—

- (i) the weather is clear;
- (ii) the time allowed for the run of the train is more than twenty minutes;
- (iii) the Station Master has personally satisfied himself that the outer signal, is clearly showing "danger" in the direction of the approaching train; and
- (iv) if the train has arrived at the Outer signal, the station Master has personally satisfied himself, that the train has been brought to a dead stand at that signal.

118. Obstruction outside the Outer signal.—Obstructing the line outside the Outer signal is prohibited, unless the line has been blocked back.

CHAPTER VII.

THE LINE CLEAR AND CAUTION MESSAGE SYSTEM.

119. Essentials of the Line Clear and Caution Message system.—

Where trains are worked on the Line Clear and Caution Message system, no train shall be allowed to leave a station, unless—

- (a) permission to approach has been obtained by telegram from the station ahead, and
- (b) the Engine Driver has been given a written authority to proceed, certifying that the line on which he has to travel is either—
 - (i) absolutely clear of trains; or
 - (ii) occupied only by trains running in the same direction at time intervals.

120. Conditions under which permission to approach may be given.—

Such permission to approach shall not be given, unless, either—

- (1) the line on which the train is to travel is absolutely clear of trains and all other known obstructions upto the outer signal, and the whole of the last preceding train has passed inside the facing points or has arrived at the place at which trains usually come to a stand, or
- (2) the line, outside the facing points, on which the train has to travel, is occupied only by a train running in advance in the same direction, at an adequate interval of time, and a line has been prepared in the station for the receipt of the train running in advance.

121. Nature of the authority to proceed.—(1) In case (1) of Rule 120, the authority to proceed referred to in Rule 119 shall be a Line Clear Certificate stating that the line is clear.

(2) In case (2) of Rule 120, the said authority to proceed shall be a Caution Certificate stating—

- (a) that the line is occupied only by a train running in advance in the same direction at a stated interval of time; and
- (b) the time of the departure of the said train, and the place at which it will next stop.

122. Restrictions on grant of authority to proceed.—An authority to proceed shall not be granted at any station in case (2) of Rule 120—

- (a) if the train which is to follow a train running in advance is to be allowed to run at more than thirty miles an hour, or
- (b) if the distance to the station ahead is less than five miles, or
- (c) except in accordance with special instructions, unless the train running in advance has left the station at least fifteen minutes previously, or at such greater interval as may enable the said train, at its

booked speed, to reach the next station at least fifteen minutes before the following train at its booked speed can do so.

123. Delivery of authority to proceed to Engine Driver or Guard.—

(1) Every authority to proceed as defined in rule 121 shall be delivered by the Station Master, or by some railway servant appointed in this behalf under special instructions,—

(a) to the Engine Driver, if the train runs through the station without stopping, or

(b) to the Guard in charge of the train, if the train stops at the station.

(2) When such authority to proceed is delivered to the Engine Driver under clause (1) (a) of this rule, a duplicate shall be given to the said guard.

(3) When an authority to proceed is delivered to the said Guard under clause (1) (b) of this Rule, it must be either—

(i) handed personally by the Guard to the Engine Driver, or

(ii) countersigned by the Guard, and then handed to the Engine Driver either by the Station Master or by some railway servant, appointed in this behalf by special instructions.

(4) An authority to proceed shall not be handed to the Engine Driver under sub-rule (3)—

(i) until the train is nearly ready to start, or

(ii) if the train is waiting to pass another train—until the whole of the latter train has come in and is clear of the running road for the former train.

124. Responsibilities as to proper preparation of authority to proceed.—(1) When an authority to proceed is delivered to the Engine Driver under clause (1) (a) of Rule 123, the Station Master must see—

(a) that it is properly filled up,

(b) that the date and time of the receipt of the line-clear or caution telegram upon which it is based are noted thereon,

(c) that it applies to the particular train to which such telegram refers, and

(d) that it is signed in full and in ink.

(2) When an authority to proceed is delivered to the Guard in charge of the train under clause (1) (b) of Rule 123, he must, before it is handed to the Engine Driver, satisfy himself on the several points mentioned in sub-rule (1) of this Rule.

(3) Whether the train stops or runs through a station, the Engine Driver must satisfy himself, so far as he may be able to do so, on the several points mentioned in sub-rule (1) of this Rule, and if he finds that any of them are not complied with, he must not proceed with his train until the mistake or the omission is rectified.

125. Obstruction in face of approaching train followed by another train.—Obstructing the line outside the facing points in face of an

train followed by another train, for which a permission to approach has been given, is prohibited.

126. Obstruction when approaching train is not followed by another train.—At a station where an approaching train is not being followed by another train, shunting shall not be carried on except—

- (a) in accordance with Rule 117; or
- (b) where the special instructions referred to in Rule 110 are obeyed, and the necessary signals are kept "on", then in accordance with Rules 112 and 113.

CHAPTER VIII.

THE FOLLOWING TRAINS SYSTEM.

127. Essentials of the Following Trains system.—Where trains are worked on the Following Trains system, they may be despatched from one station to the next, following each other in succession in the same direction on the same line, at such intervals of time as may be prescribed by special instructions, until it has been mutually arranged by telegraph between the Station Masters at either end of the section that such succession is to cease.

128. Introduction of the Following Trains system.—The Following Trains system may, notwithstanding anything contained in Rule 91, be introduced in case of emergency when specially ordered by the authorised officer.

129. Conditions precedent to working of trains on the Following Trains system.—Trains shall not be worked on the Following Trains system, unless the Station Master of the station ahead has telegraphed his readiness to receive the trains, and has given his assurance that no train will be allowed to leave his station for the station, from which the Following Trains are to be despatched, until the latter have all arrived at his station, and until he has received permission to despatch trains in the opposite direction.

130. Conditions to be observed in working trains.—When the Following Trains system is adopted, the following conditions must be observed, namely:—

- (a) no train shall be allowed to start, until the Engine Driver has been given a written authority to proceed and a written acknowledgement thereof has been obtained from him, the train being stopped for the purpose if not booked to stop;
- (b) the authority to proceed shall state the time of the actual departure of the preceding train, the place at which it is next to stop, and the speed at which it is to run;
- (c) the Enging Driver and Guard of each preceding train must have been

informed of the fact that a train will follow, and of the probable period which will elapse before the following train will be allowed to start;

- (d) a train shall not be allowed to follow another from a station, unless there has elapsed, since the departure of the previous train, an interval of not less than fifteen minutes, or such shorter interval (if any) as may be fixed by special instructions;
- (e) all the trains shall be timed to run at the same speed, and such speed shall not exceed fifteen miles an hour, except under special instructions;
- (f) no shunting shall be carried on between the Outer signal and the facing points while following trains are approaching;
- (g) the actual time of the departure of each train must at once be intimated by telegraph to the station ahead, and the actual time of arrival of each train must at once be intimated to the station in rear; and
- (h) the number of following trains, running at the same time between any two stations, shall not be more than one for each three miles of station interval; and, unless permitted by special instructions shall never exceed four, whatever may be the length of the station interval.

131. Report of orders and special instructions.—When any order is given under Rule 128, and when any special instructions are used under Rule 130, the same must immediately be reported by telegram to the Government Inspector.

132. Application of certain rules.—Rules 123 to 125 shall apply to working on the Following Trains system.

133. Cessation of working on the Following Trains system.—When it is intended that no more following trains shall be despatched in the same direction, the Station Master shall intimate such intention by telegraph to the station ahead, after which no more trains in either direction may be despatched between the two stations until the last train has arrived at the station ahead and the line has been cleared between the two stations.

CHAPTER IX.

THE TRAIN-STAFF AND TICKET SYSTEM.

134. Essentials of the Train-Staff and Ticket system.—Where trains are worked between two stations on the Train-staff and Ticket system—

- (a) a single Train-staff must be kept at one of such stations, and
- (b) no train shall be permitted to start from either of such stations to the other, unless the said Train staff is at the station from which the train starts, and has either been handed to or shown to the Engine Driver by the Station Master when giving such permission.

135. System where applicable.—Trains may be worked on the Train-staff and Ticket system, only when the line is single and only between such stations as have been declared by special instructions to be staff-stations.

136. General conditions.—Trains shall not be allowed to follow one another in the same direction between staff-stations, unless the Engine Driver has been properly warned of the time of departure of the preceding train and of the place at which it will next stop, and

(1) in the case of a passenger train to follow a goods train, or a goods train to follow a slow passenger train, an interval of fifteen minutes (or, if the distance to the next station in advance exceeds ten miles, such longer interval as is prescribed by special instructions) has elapsed since the departure of the preceding train, and

(2) in any other case, either—

(i) it has been ascertained that the preceding train has arrived at the next station in advance, or

(ii) an interval of ten minutes has elapsed since the departure of the preceding train.

137. Engine driver to have staff or ticket.—No train shall be started from a station, unless the Engine Driver has in his possession, to be carried with him on the journey, either the Train-staff or a Train staff Ticket, for the section of the line over which the train is about to travel.

138. Staff or ticket by whom to be delivered to Engine Driver.—The Train-staff or Train-staff Ticket shall be delivered to the Engine Driver by the Station Master, or by some railway servant appointed in this behalf by special instructions.

139. Staff or ticket when to be delivered to Engine Driver.—(1) When no other train is intended to follow before the Train-staff will be required for a train running in the opposite direction, then, subject to the provisions of sub-rule (3), the Train-staff shall be delivered to the Engine Driver.

(2) When other trains are intended to follow before the Train-staff can be returned, then, subject to the provisions of sub-rule (3), a Train-staff Ticket, indicating that the Train-staff is following shall be delivered to the Driver of each train except the last; and the Train-staff shall be delivered to the Driver of the last train.

(3) When a train is assisted by a second engine in the rear, a Train-staff Ticket shall be delivered to the Driver of the front engine, and the Train staff shall be delivered to the Driver of the rear engine.

Provided that if both the engines attached to the train are to travel over the entire length of line to which the Train-staff applies, and the train is to be followed by other trains, a Train-staff Ticket shall be delivered to the Driver of each of the engines attached to the first mentioned train.

(4) When a train is assisted by a second engine in the front, the Train-staff or a Train-staff Ticket, as the case may be, must be delivered to the Driver of the leading engine.

(5) When a ballast train has to stop between stations, the Train-staff shall be delivered to the Engine Driver.

(6) The Train-staff or a Train-staff Ticket shall not be delivered to the Driver of any train, until the train is ready to start.

(7) The Engine Driver shall not accept a Train-staff Ticket, unless he sees the Train-staff at the same time in the possession of the person who delivers the Ticket to him.

140. Staff to be kept on engine.—When the Train-staff is delivered to the Driver of a train, he shall place it in a conspicuous place provided for the purpose on the engine.

141. Trains not to be started until staff returned.—When the Train-staff has been taken away from a station by the Driver of a train, no other train shall be started from that station, to follow the first-mentioned train, until the Staff has been returned to the station.

142. Staff or ticket to be given up, and ticket to be cancelled, on arrival of train.—(1) Upon the arrival of a train at the station to which the Train-staff or a Train-staff Ticket extends, the Engine Driver must immediately give the Staff or Ticket to the Station Master, or to some railway servant appointed by special instructions to receive it.

(2) The person to whom any such ticket is so delivered must immediately cancel the same.

143. Procedure when engine is disabled.—(1) If an engine which carries the Train-staff breaks down between two stations, the Fireman must take the Staff to the staff-station in the direction whence assistance can best be obtained, in order that the Staff may be available at the station for delivery to the Driver of the assisting engine.

(2) If an engine which carries a Train-staff Ticket breaks down between two stations, assistance must ordinarily be obtained only from the station at which the Train-staff has been left. But if assistance can more readily be obtained from another station in the opposite direction, immediate steps must be taken to have the Staff transferred to the other end of the section.

(3) Whenever an engine has broken down between two stations, the Fireman must accompany the assisting engine to the spot.

144. Tickets how kept.—Train-staff Tickets must be kept in a ticket box provided for the purpose and fastened by an inside spring, the key to open the box being the Staff to which the tickets apply.

145. **Train-staff how kept.**—The Train-staff, when at a station, shall not be left in the box, but must be kept by the Station Master in safe custody.

146. **Distinguishing marks on staff tickets and boxes.**—(1) Each Train-staff must have shown upon it the name of the staff-station at each end of the portion of line to which it applies.

(2) The Train-staffs and Train-staff Tickets and boxes for the different portions of the line must be distinguished by different colours.

(3) "Up" and "Down" Train-staff Tickets must also have distinguishing marks.

147. **Form of Ticket.**—Every Train-staff ticket shall be in the following form:—

Ticket No. _____		_____ Railway.	
TRAIN-STAFF TICKET.			
DOWN (or UP).			
Train No. _____		_____	
_____ h _____ m	From _____	to _____	
TO ENGINE DRIVER AND GUARD.			
<i>You are authorised to proceed from</i>			

<i>to</i>			

<i>and the Train-Staff will follow.</i>			
Train No. _____		in front left _____ h _____ m.	
Signed _____			
Station Master at _____			
Date _____			

(Back of ticket.)

The Engine Driver shall not accept this ticket unless he sees the Train-staff for the portion of line which he is about to enter.

This ticket is to be given up by the Engine Driver immediately on arrival to the Station Master or other person authorised to receive it, and such person must immediately cancel it.

148. **Record of Tickets Issued.**—The Station Master must keep a record in a book of each Train-Staff Ticket issued, showing the number of each ticket and the particular train for which it was issued.

CHAPTER X.

THE PILOT GUARD SYSTEM.

149. Essentials of the Pilot Guard System.—When trains are worked on the Pilot Guard system,—

- (a) a railway servant (hereafter called a Pilot Guard must be specially deputed to pilot trains, and
- (b) no train shall be allowed to leave a station except under the personal authority of the Pilot Guard.

150. System where applicable.—Trains may be worked on the Pilot guard system—

- (a) on short branch lines having a single line of rails, or
- (b) on lines to which the application of the system is authorised by special instructions,

151. General conditions.—Trains shall not be allowed to follow one another in the same direction between stations, except under the conditions prescribed in Rule 136.

152. Pilot Guard's dress or badge.—The Pilot Guard must be distinguished by a red dress or badge.

153. Pilot Guard to accompany train or give authority to proceed.—
(1) No train shall be started from a station, unless the Engine Driver sees that it is accompanied by, or that the authority to proceed is given personally by, the Pilot Guard, wearing the dress or badge prescribed by Rule 152.

- (2) The Pilot Guard must accompany every train:

Provided that when it is necessary to start two or more trains from one end of the line before a train has to be started from the other end, the Pilot Guard shall accompany only the last of such trains, and shall personally give the authority to proceed for the preceding trains.

- (3) When accompanying a train, the Pilot Guard must ride on the foot-plate of the engine.

154. Pilot Guard's tickets.—(1) When the Pilot Guard does not accompany a train, he shall deliver to the Guard in charge (or, if there be no Guard in charge, to the Engine Driver) a Pilot Guard's ticket (on a printed form, where such are provided), properly filled up and signed, as the authority to proceed.

- (2) Every such ticket shall apply only to the single journey to the station named on it.

- (3) If the train is in charge of a Guard, he shall, before the train is started, deliver the ticket to the Engine Driver.

- (4) Immediately on the arrival of the train, the Engine Driver shall deliver the ticket to the Station Master, who shall at once cancel it.

CHAPTER XI.

THE ONE ENGINE ONLY SYSTEM.

155. **Essentials of the One engine only system.**—Where trains are worked on the One engine only system, only one engine in steam, or two or more engines coupled together, shall be allowed on the line at one and the same time.

156. **Application of the One engine only system.**—Trains may be worked on the One engine only system, only on short branch railways having a single line of rails.

157. **Procedure in case of accident.**—If a train becomes disabled and requires assistance, or if an accident occurs which renders it impossible for the engine (or, if two or more engines are coupled together, for either or both of such engines) to proceed, the Guard in charge of the train must instruct the Engine Driver to keep the engine stationary until his return, and must then proceed to the station from which assistance can best be obtained, and must inform the Station Master thereof the circumstances.

(2) Such Station Master may then allow another engine to enter the line.

(3) Such other engine must be accompanied by the Guard in charge of the disabled train, who must explain to the Engine Driver where, and under what circumstances, the disabled train is situated.

(4) Such Guard shall be responsible for the safe and proper working of the line until each engine has left it and it is again clear.

(5) If there be no Guard in charge of the disabled train, the Fireman, or, if necessary, the Engine Driver, must perform the duties imposed by this rule on the Guard.

CHAPTER XII.

USE OF ELECTRICAL INSTRUMENTS ON DOUBLE LINES.

GENERAL PROVISIONS.

158. **Means of working.**—Trains may be worked by means of—

- (a) electric block instruments, or
- (b) electric speaking instruments.

159. **Provision of instruments.**—(1) Electric speaking instruments must be provided at every station, except class D stations.

(2) The electric block instruments (where provided) and electric speaking instruments at any station must be a type approved of by the Government Inspector.

160. Authority to proceed.—The Engine Driver shall not take his train from a station, unless he has been given an authority to proceed, by the taking "off" of the last Stop signal of the station.

161. Caution Order.—(1) Whenever, in consequence of the line being under repair or for any other reason, special precautions are necessary, a Caution order detailing the mileages between which such precautions are necessary, the reasons for taking such precautions and the speed at which the train should travel, shall be handed to the Engine Driver at the stopping station immediately short of the place where special precautions are needed, or at such stations as may be prescribed by the authorised officer.

(2) Clause (1) of this rule does not apply in the case of long continued repairs when fixed signals are provided at an adequate distance short of such place and have been notified by the train Department to the running staff concerned.

STATIONS AT WHICH ELECTRIC BLOCK INSTRUMENTS ARE PROVIDED.

162. Signalling of Trains.—Every running train must, in its progress from station to station, be signalled on the electric block instruments.

163. Certificate of competency.—No person shall operate the block instruments until he has passed a satisfactory examination, and unless he holds a certificate of competency granted by a railway servant appointed in this behalf by the Railway Administration.

164. Bell Code.—Except under approved special instructions, the uniform Bell Code given on next page shall be used, and a copy thereof shall be hung up in each station above the block instruments.



Code of bell signals.—The following Code of Signals is to be used, and each signal must be given slowly and distinctly:—

Reference No.	Indication.	Code.	How signalled.	How acknowledged.
1	CALL ATTENTION ...	...	One stroke or beat.	One stroke.
2	IS LINE CLEAR, OR LINE CLEAR ENQUIRY for (a) Mail train ...	...	...	...
	" (b) Postal Express ...	...	Two ..	Two; and sending Line Clear.
	" (c) Express Passenger or Troop train ...	...	...	...
	" (d) Relief train or engine going to accident ...	...	...	...
	" (e) Inspection Special going through ...	...	...	...
	" (f) Ordinary Passenger train ...	...	Two pause one	Two pause one; and sending Line Clear.
	" (g) Mixed train ...	...	...	...
	" (h) Through Goods ...	...	Two pause two	Two pause two; and sending Line Clear.
	" (i) Ballast train going through ...	...	Two pause three	Two pause three; and sending Line Clear.
	" (j) Relief train returning from accident ...	...	Two pause four	Two pause four; " " "
	" (k) Van Goods, pick-up, or working train.	...	Two pause five	Two pause five; " " "
	" (l) Ballast train stopping in Section.	...	Two pause six	Two pause six; " " "
	" (m) Inspection train stopping in Section.	...	Two pause three pause one	Two pause three pause one; and sending Line Clear.
	" (n) Light Engine or Coupled Light Engines	...	Three pause one	Three and sending Train on Line
	" (o) Remount Special train ...	...	Three pause one	Three pause one; and sending Train on Line.
	" (p) Cattle Special ...	...	Three pause two	Three pause two; and sending Train on Line.
	" (q) Express Goods ...	...	Three pause three	Three pause three; and sending Train on Line.
3	TRAIN ENTERING SECTION	...	...	...
(a)	Train entering Section to shunt for following train to pass ...	...	Four...	Four.
(b)	Train Entering Section for Branch	...	Five...	Five.
(c)	" " " with Engine in rear.	...	Six ...	Six.
(d)	" " " " "	...	Six pause one...	Six pause one.
4	TRAIN OUT OF SECTION...	...	Six pause two...	Six pause two.
(a)	Obstruction removed ...	...	Six pause three...	Six pause three.
(b)	CANCEL LAST SIGNAL ...	...	Six pause four...	Six pause four.
5	SIGNAL GIVEN IN ERROR	...	Six pause five...	Six pause five.
6	OBSTRUCTION DANGER SIGNAL (general)	...	...	...
(a)	Stop and Examine Train...	...	...	...
(b)	Train passed without Tail-Lamp or Tail-Board ...	...	...	...
(c)	Train divided ...	...	...	...
(d)	Vehicles running away on Wrong Line ...	...	...	...
(e)	Vehicles running away on Right Line ...	...	...	...

**STATIONS AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE PROVIDED—(contd.)**

165. Acknowledgement of Signals—(1) each signal received must be acknowledged by the sending of its authorised acknowledgement.

(2) No signal shall be acknowledged until it is clearly understood.

(3) A signal shall not be considered to be complete until it is acknowledged.

(4) Should the station to which a signal is sent not reply, the signal must be repeated at intervals of not less than twenty-seconds until the reply is received.

166. Train Register Book.—(1) A train Register book shall be kept by the Station Master or under his orders.

(2) The person who keeps the said book shall enter therein,—

(a) immediately after the acknowledgement, all signals received or sent on the block instrument, and the times of receipt and despatch; and

(b) every instance of a train being shunted at a station for another train to pass.

(3) The times entered in the book must be the actual times, except that any fraction of a minute must be counted as one minute.

(4) All entries in the book must be made in ink.

(5) No erasure shall be made in the book; but if any entry is found to be incorrect, a line must be drawn lightly through it, so that it may be read at any time, and the correct entry must be made above it.

(6) The person who keeps the book shall be responsible for all entries made therein and for correctly filling in each column thereof after completion.

167. The attention signal.—The attention signal must be given when it is necessary to direct attention to the block instrument.

(2) When the attention signal is sent before the despatch of the Is Line Clear signal, it shall not be given until the Train out of the Section signal has been received for the last preceding train.

168. The Is Line Clear signal when to be sent.—In order to ascertain whether the station in advance is in a position to give a permission to approach to the station in rear, and in order to describe the train, the Is Line Clear signal (as in the Bell Code, according to the description of train) must be sent to the station in advance.

169. Acceptance of the Is Line Clear signal, and sending of a line Clear signal.—(1) If on the receipt of an Is Line Clear signal, the conditions under which a permission to approach can be given are complied with, the station in advance must accept the signal, by sending the signal, prescribed by special instructions, to indicate Line Clear on the particular block instruments in use.

(2) Except in case of failure of the block instruments, a train shall not be allowed to leave a station, unless the instrument for the section into which it is about to proceed shows Line Clear.

**STATIONS AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE PROVIDED—(contd).**

(3) When Line clear is so shown, the semaphore signals, applying to the train, may be taken "off" to allow the train to proceed.

170. Refusal of the Is Line Clear signal and sending of the Obstruction-Danger signal.—(1) If, by reason, of the line being blocked by the presence of a train in the section, or for any other reason, the station in advance is unable to accept the Is Line Clear signal, such station must refuse it by sending the Obstruction-Danger signal.

(2) If the station in advance does not accept the Is Line Clear signal, the train must be stopped at the station, and shall not be allowed to leave it, until a fresh Is Line Clear signal has been given to and accepted by the station in advance.

171. The Train Entering Section signal.—(1) On the departure of a train from a station, the Train Entering Section signal must be sent to the station in advance, and must be duly acknowledged.

(2) When so acknowledged, the section shall be considered to be blocked against any other train following.

172. The train out of Section or Obstruction Removed signal.—(1) On the arrival of a train or on the removal of the cause which blocked the section, the train out of Section or Obstruction Removed signal must be given by the station in advance.

(2) Before the Train out of Section signal is given, the Station Master must—

(a) satisfy himself that the train has arrived complete; and

(b) satisfy himself that the conditions under which permission to approach can be given are complied with.

173. The cancelling signal.—(1) The Cancelling signal cancels the last signal given from the station from which it is sent.

(2) Where an Is Line Clear signal has been forwarded, and it is afterwards found that the train to which it referred has to be detained for shunting or other purposes at, or has returned to, the station from which that signal was sent, the Cancelling signal must be sent to the station in advance, so that the previous signal may be cancelled.

174. The Testing signal.—The Testing signal shall be used only for the purpose of testing the instruments.

175. Failure of block instruments.—(1) If the block instruments or their electric connections should fail, permission to approach must be obtained through the electric speaking instruments.

(2). When permission to approach has been so obtained, an entry to that effect must be made in the train Register book, and the train may then be allowed to proceed.

**STATIONS AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE NOT PROVIDED.**

176. Transmission of signals.—The signals referred to in Rules 161, 165 and 168 to 173 (both inclusive), or such modifications thereof as may be prescribed by special instructions, shall be transmitted, as occasion may require, on the electric speaking instruments.

177. Forms for messages.—(1) All messages despatched in connection with the working of trains shall be written on forms especially provided for the purpose by the Railway Administration.

(2). Such forms shall be bound up in books and kept at each station by the Station Master or by some railway servant appointed in this behalf by special instructions,

178. Distinction of messages.—(1) Every message despatched in connection with the working of a train must distinctly describe the train to which it relates.

(2). For every train a separate inquiry and reply must be sent.

179. Writing and signing of messages.—(1) All messages despatched in connection with the working of trains shall be written up in ink or with some other indelible substance, and shall be signed by the person authorised to despatch or issue the same.

(2). No message shall be written out, either in full or in part, or signed, until necessary.

180. Completion of messages.—No part of any message shall be despatched or acted upon until the whole message has been written out, except in view to the prevention of an accident or in some other case of emergency.

181. Preservation of messages.—Messages shall be destroyed at such time after issue as may be prescribed by special instructions.

Provided that no message shall be destroyed in less than a fortnight after issue.

CHAPTER XIII.

USE OF ELECTRICAL INSTRUMENTS ON SINGLE LINES.

GENERAL PROVISIONS.

182. Application of Chapter.—This Chapter applies only to working any of the following systems:—(a). Absolute Block, (b). Section Clear, (c). Clear and Caution Message, (d). Following Trains.

No.	CALL ATTENTION ...	IS LINE CLEAR, OR LINE CLEAR ENQUIRY for (a) Mail train ...	...	...	...	One stroke.
1	(b) Postal Express	...	...	...	...	Two.
2	(c) Express Passenger or Troop train	...	...	...	...	Two.
	(d) Relief train or Engine going to accident	...	...	...	...	Two.
	(e) Inspection Special going through	...	...	...	...	Two.
	(f) Ordinary Passenger train	...	...	...	...	Two.
	(g) Mixed train	...	...	...	...	Two.
	(h) Through Goods	...	...	...	...	Two.
	(i) Ballast train going through	...	...	...	...	Two.
	(j) Relief train returning from accident	...	...	...	...	Two.
	(k) Van Goods, pick-up, or working train.	...	...	...	...	Two.
	(l) Ballast train stopping in Section	...	...	...	...	Two.
	(m) Inspection train stopping in Section.	...	...	...	...	Two.
	(n) Light Engine or Coupled Light Engines	...	...	...	...	Two.
	(o) Remount Special train	...	...	...	...	Two.
	(p) Cattle Special	...	...	...	...	Two.
	(q) Lorry or trolley	...	...	...	...	Two.
	(r) Express Goods	...	...	...	...	Two.
3	(a) TRAIN ENTERING SECTION	...	...	...	...	Two.
	(b) Train entering Section to shunt for following train to pass	...	...	...	...	Two.
	(c) Train Entering Section for Branch	...	...	...	...	Two.
	(d) " " with Engine in rear.	...	...	...	...	Two.
4	(a) TRAIN OUT OF SECTION...	...	...	...	...	Two.
	(b) Obstruction removed	...	...	...	...	Two.
5	(a) CANCEL LAST SIGNAL	...	...	...	...	Two.
	(b) Signal given in error	...	...	...	...	Two.
6	(a) OBSTRUCTION DANGER SIGNAL (general)	...	...	...	...	Two.
	(b) Stop and Examine Train	...	...	...	...	Two.
	(c) Train passed without Tail-Lamp or Tail-board	...	...	...	...	Two.
	(d) Train divided	...	...	...	...	Two.
	(e) Vehicles running away	...	...	...	...	Two.
	ENDING SIGNAL	...	...	...	...	Two.

**STATIONS AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE PROVIDED—(contd.)**

188. Acknowledgement of signals.—(1) Each signal received must be acknowledged by the sending of its authorised acknowledgment.

(2) No signal shall be acknowledged until it is clearly understood.

(3) A signal shall not be considered to be complete until it is acknowledged.

(4) Should the station to which a signal is sent not reply, the signal must be repeated at intervals of not less than twenty seconds until the reply is received.

189. Train Register Book.—(1) A Train Register book shall be kept by the Station Master or under his orders.

(2) The person who keeps the said book shall enter therein, immediately after acknowledgment, all signals received or sent on the instruments, and the time of receipt and despatch.

(3) The times entered in the book must be the actual time except that any fraction of a minute must be counted as one minute.

(4) All entries in the book must be made in ink.

(5) No erasure shall be made in the book; but if any entry is found to be incorrect, a line must be drawn lightly through it, so that it may be read at any time, and the correct entry must be made above it.

(6) The person who keeps the book shall be responsible for all entries made therein and for correctly filling in each column thereof.

190. The Attention signal.—(1) The Attention signal must be given when it is necessary to direct attention to the block instrument.

(2) When the Attention signal is sent before the despatch of the Is Line Clear signal, it shall not be given until the Train out of Section signal has been received for the last preceding train.

191. The Is Line Clear signal when to be sent.—In order to ascertain whether the station in advance is in a position to give a permission to approach to the station in rear, and in order to describe the train, the Is Line Clear signal (as in the Bell Code, according to the description of train) must be sent to the station in advance.

192. Acceptance of the Is Line Clear signal, and sending of a Line Clear signal.—(1) If, on the receipt of an Is Line Clear signal, the conditions under which a permission to approach can be given are complied with, the station in advance must accept the signal, by sending the signal, prescribed by special instructions, to indicate Line Clear on the particular block instruments in use.

(2) Except in case of failure of the block instruments, a train shall not be allowed to leave a station unless the Line Clear signal has been so sent.

**STATIONS AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE PROVIDED—(contd.)**

193. Refusal of the Is Line Clear signal, and sending of the Obstruction Danger signal.—(1) If, by reason of the line being blocked by the presence of a train in the section or by shunting, or for any other reason, the station in advance is unable to accept the Is Line Clear signal, such station must refuse it by sending the Obstruction danger signal.

(2) If the station in advance wishes the train to be detained at the station from which the Is Line Clear signal is sent, in order to cross a train approaching from the opposite direction, the Is Line Clear signal must be refused by sending the Obstruction Danger signal.

(3) If the station in advance does not accept the Is Line Clear signal, the train must be stopped at the station, and shall not be allowed to leave, until a fresh Is Line Clear signal has been given to and accepted by the station in advance.

194. The Train Entering Section signal.—(1) On the departure of a train from a station, the Train Entering Section signal must be sent to the station in advance, and must be duly acknowledged.

(2) When so acknowledged, the section shall be considered to be blocked against any other train.

195. The Train out of Section or Obstruction Removed signal.—(1) When the section is cleared by the arrival of the train or by the removal of the cause of blocking, the Train out of Section or Obstruction Removed signal must be given by the station in advance.

(2) Before the Train out of Section signal is given the Station Master must—

(a) satisfy himself that the train has arrived complete; and

(b) satisfy himself that the conditions under which permission to approach can be given are complied with.

196. The Cancelling signal.—(1) The cancelling signal cancels the last signal given from the station from which it is sent.

(2) Where an Is Line Clear signal has been forwarded and it is afterwards found that the train to which it referred has to be detained for shunting or other purposes at, or has returned to the station from which that signal was sent, the cancelling signal must be sent to the station in advance, so that the previous signal may be cancelled.

197. The Testing signal.—The Testing signal shall be used only for the purpose of testing the instruments.

198. Engine Driver to have authority to proceed.—The Engine Driver shall not take his train from a station unless he has in his possession, as his authority to proceed, either—

**STATIONS AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE PROVIDED—(contd.)**

188. Acknowledgement of signals.—(1) Each signal received must be acknowledged by the sending of its authorised acknowledgment.

(2) No signal shall be acknowledged until it is clearly understood.

(3) A signal shall not be considered to be complete until it is acknowledged.

(4) Should the station to which a signal is sent not reply, the signal must be repeated at intervals of not less than twenty seconds until the reply is received.

189. Train Register Book.—(1) A Train Register book shall be kept by the Station Master or under his orders.

(2) The person who keeps the said book shall enter therein, immediately after acknowledgment, all signals received or sent on the instruments, and the time of receipt and despatch.

(3) The times entered in the book must be the actual time except that any fraction of a minute must be counted as one minute.

(4) All entries in the book must be made in ink.

(5) No erasure shall be made in the book, but if any entry is found to be incorrect, a line must be drawn lightly through it, so that it may be read at any time, and the correct entry must be made above it.

(6) The person who keeps the book shall be responsible for all entries made therein and for correctly filling in each column thereof.

190. The Attention signal.—(1) The Attention signal must be given when it is necessary to direct attention to the block instrument.

(2) When the Attention signal is sent before the despatch of the Is Line Clear signal, it shall not be given until the Train out of Section signal has been received for the last preceding train.

191. The Is Line Clear signal when to be sent.—In order to ascertain whether the station in advance is in a position to give a permission to approach to the station in rear, and in order to describe the train, the Is Line Clear signal (as in the Bell Code, according to the description of train) must be sent to the station in advance.

192. Acceptance of the Is Line Clear signal, and sending of a Line Clear signal.—(1) If, on the receipt of an Is Line Clear signal, the conditions under which a permission to approach can be given are complied with, the station in advance must accept the signal, by sending the signal, prescribed by special instructions, to indicate Line Clear on the particular block instruments in use.

(2) Except in case of failure of the block instruments, a train shall not be allowed to leave a station unless the Line Clear signal has been so sent.

*STATIONS AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE PROVIDED—(contd.)*

193. Refusal of the Is Line Clear signal, and sending of the Obstruction Danger signal.—(1) If, by reason of the line being blocked by the presence of a train in the section or by shunting, or for any other reason, the station in advance is unable to accept the Is Line Clear signal, such station must refuse it by sending the Obstruction danger signal.

(2) If the station in advance wishes the train to be detained at the station from which the Is Line Clear signal is sent, in order to cross a train approaching from the opposite direction, the Is Line Clear signal must be refused by sending the Obstruction Danger signal.

(3) If the station in advance does not accept the Is Line Clear signal, the train must be stopped at the station, and shall not be allowed to leave, until a fresh Is Line Clear signal has been given to and accepted by the station in advance.

194. The Train Entering Section signal.—(1) On the departure of a train from a station, the Train Entering Section signal must be sent to the station in advance, and must be duly acknowledged.

(2) When so acknowledged, the section shall be considered to be blocked against any other train.

195. The Train out of Section or Obstruction Removed signal.—(1) When the section is cleared by the arrival of the train or by the removal of the cause of blocking, the Train out of Section or Obstruction Removed signal must be given by the station in advance.

(2) Before the Train out of Section signal is given the Station Master must—

(a) satisfy himself that the train has arrived complete; and

(b) satisfy himself that the conditions under which permission to approach can be given are complied with.

196. The Cancelling signal.—(1) The cancelling signal cancels the last signal given from the station from which it is sent.

(2) Where an Is Line Clear signal has been forwarded and it is afterwards found that the train to which it referred has to be detained for shunting or other purposes at, or has returned to the station from which that signal was sent, the cancelling signal must be sent to the station in advance, so that the previous signal may be cancelled.

197. The Testing signal.—The Testing signal shall be used only for the purpose of testing the instruments.

198. Engine Driver to have authority to proceed.—The Engine Driver shall not take his train from a station unless he has in his possession, as his authority to proceed, either—

**STATIONS AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE PROVIDED—(contd.)**

- (a) a token for the section taken from an electrical instrument, or
- (b) a Line Clear ticket duly signed by the Station Master, or
- (c) a document prescribed in this behalf by special instructions.

199. Authority to proceed when to be delivered to Engine Driver.—

An authority to proceed shall not be delivered to the Engine Driver until the procedure prescribed in the foregoing rules in this Chapter, so far as it is applicable in the particular case, has been followed.

200. Token extracted from electrical instruments.—(1) When the authority to proceed is a token taken from electrical instruments, the number of the token must be recorded in the Train Register book.

(2) On arrival of the train at the station in advance, the Engine Driver shall deliver up the token in accordance with special instructions, and this token shall then be placed in the instrument at that station.

(3) If the train has to return to the station from which it started, the token shall, on such return, be replaced in the instrument from which it was extracted.

201. Line Clear Ticket.—(1) When the authority to proceed is a Line Clear Ticket, it shall, except under special instructions, be in the following form:—

Pro. No. _____	_____ Railway.
<u>Up</u> <u>Down</u> Line Clear.	
No. of train _____	
Date _____ 192 .	Time _____ H. _____ M.
From Station Master _____	
To Driver of No. _____ <div style="float: right; text-align: center;"> <u>Up</u> <u>Down</u> </div>	
The line is clear and you are hereby authorised to proceed to _____	
Private No. _____	_____ Station Master.

(2) Each such ticket shall bear a serial number which shall be recorded in the Train Register Book, the numbers for the Down direction being clearly distinguished from those for the up direction.

* This entry may be omitted or modified to suit the requirements of those administrations which do not use a "private number" or which use a "private code" instead.

**STATION AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE PROVIDED—(contd).**

201-A. Caution Order—(1) Whenever, in consequence of the line being under repair or for any other reason, special precautions are necessary, a Caution Order detailing the mileages between which such precautions are necessary, the reasons for taking such special precautions, and the speed at which the train should travel shall, in addition to the token mentioned in rule 198 (a), or the Line Clear ticket mentioned in Rule 198 (b), be handed to the Engine Driver at the stopping station immediately short of the place where special precautions are needed or at such station as may be prescribed by the authorised officer.

(2) Clause (1) of this rule does not apply in the case of long continued repairs when fixed signals are provided at any adequate distance short of such place and have been notified by the Traffic Department to the running staff concerned.

202. Responsibility of Station Master as to authority to proceed.—The Station Master must see that the authority to proceed delivered to an Engine Driver is accurate, and that, when it is in writing, it is complete and is signed in full and in ink.

203. Authority to proceed when to be delivered to Engine Driver stopping at station.—If the train stops at the station, and is waiting to pass another train the authority to proceed shall not be delivered to the Engine Driver, until the whole of the latter train has come in and is clear of the running road for the former train.

204. who to deliver authority to proceed to Engine Driver.—An authority to proceed shall not be delivered to the Engine Driver, except by the Station Master or by some railway servant, appointed in this behalf by special instructions.

205. Delivery of authority to proceed when there are two Engine Drivers.—If two engines are coupled together, or if one engine is in front and another in rear of the train, the authority to proceed shall be handed to the Driver of the leading engine.

206. Examination by Engine Driver of authority to proceed.—(1) The Engine Driver must see that the authority to proceed is accurate and applies to the section which he is about to enter, and, if the said authority is a ticket, that it is complete and is signed in full and in ink.

(2) If the conditions mentioned in sub-rule (1) are not complied with, the Engine Driver shall not take his train past or from the station, until the mistake or the omission is rectified.

207. Failure of block instruments.—(1) If the block instruments

**STATION AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE NOT PROVIDED.**

their electric connections should fail, permission to approach must be obtained through the electric speaking instruments.

(2) When permission to approach has been so obtained, an entry to that effect must be made at the top of the Line Clear Ticket at the time of issue, and in the Train Register book, and the train may then be allowed to proceed.

**STATION AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE NOT PROVIDED.**

208. Transmission of signal.—The signals referred to in Rules 187, 188 and 190 to 196 (both inclusive), or such modifications thereof as may be prescribed by special instructions, shall be transmitted, as occasion may require, on the electric speaking instruments,

209. Forms for messages and authorities to proceed.—(1) All messages despatched in connection with the working of trains, and all written authorities to proceed shall be written on forms, specially provided for the purpose by the railway Administration.

(2) Such forms shall be bound up in books and kept at each station by the station Master, or by some railway servant appointed in this behalf by special instructions.

210. Distinction of messages.—(1) Every message despatched in connection with the working of train must distinctly describe the train to which it relates.

(2) For every train a separate inquiry and reply must be sent.

211. Writing and signing of messages and authorities to proceed.—(1) All messages despatched in connection with the working of trains, and all written authorities to proceed, shall be written up in ink or with some other indelible substance, and shall be signed by the person authorised to despatch or issue the same.

(2) No message or authority to proceed shall be written out, either in full or in part, or signed, until necessary.

212. Completion of messages.—No part of any message shall be despatched or acted upon, until the whole message has been written out, except in view to the prevention of an accident or in some other case of emergency.

213. Preservation of messages and authorities to proceed.—Messages and authorities to proceed shall be destroyed at such time after issue as may be prescribed by special instructions.

**STATION AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE NOT PROVIDED—(contd).**

Provided that no message or authority to proceed shall be destroyed in less than a fortnight after issue.

214. Cancellation of permission to approach.—When a permission to approach has been cancelled, no train shall be allowed to leave in the opposite direction until a message has been received acknowledging such cancellation, and stating that the train for which the permission to approach has been given is and will be detained.

215. Engine Driver to have authority to proceed.—The Engine Driver shall not take his train from a station unless he has in his possession, as his authority to proceed, a Line Clear Ticket duly signed by the Station Master.

216. Authority to proceed when to be delivered to Engine Driver.—An authority to proceed shall not be delivered to the Engine Driver, until the procedure prescribed in the foregoing Rules in this Chapter, so far as it is applicable, with such modifications (if any) as may be prescribed under Rule 208, has been followed.

217. Line Clear Ticket.—Except under special instructions, the Line Clear ticket referred to in rule 215 shall be in one or other of the following forms, and each ticket shall bear a serial number:—

Form No. 1.

Pro. No. _____	_____ Railway.
<div style="display: flex; justify-content: space-between;"> <u>Up</u> Line Clear. </div> <div style="display: flex; justify-content: space-between;"> <u>Down</u> </div>	
No. of train _____	
Date _____ 192 .	Time _____ H. _____ M.
From Station Master _____	
<div style="display: flex; justify-content: space-between;"> To Driver of No. _____ <u>Up</u> </div> <div style="display: flex; justify-content: space-between;"> <u>Down</u> </div>	
The line is clear and you are hereby authorised to proceed to _____	
Private No. _____ *	_____
	Station Master.

* This entry may be omitted or modified to suit the requirements of those administrations which do not use a "private number" or which use a "private code" instead.

**STATIONS AT WHICH ELECTRIC BLOCK INSTRUMENTS
ARE NOT PROVIDED—(contd).**

Form No. 2.

Pro. No. _____ Railway.

Up
Down Line Clear.

No. of train _____

Date _____ 192 . Time _____ H. _____ M.

On arrival of No. _____ Up
Down

the line will be clear to _____

No. Up
Down Arrived complete at _____ hours.

From Station Master _____,

To Driver of No. _____ Up
Down

The line is clear and you are hereby authorised to proceed
to _____

Private No. _____

Station Master.

218. Caution Order.—(1) Whenever, in consequence of the line being under repair or for any other reason, special precautions are necessary, a Caution Order detailing the mileages between which such precautions are necessary, the reasons for taking such special precautions and the speed at which the train should travel shall, in addition to the Line Clear ticket mentioned in rule 215, be handed to the Engine Driver at the stopping station immediately short of the place where special precautions are needed or at such stations as may be prescribed by the authorised officer.

(2) Clause(1) of this rule does not apply in the case of long continued repairs when fixed signals are provided at an adequate distance short of such place and have been notified by the Traffic Department to the running staff concerned.

219. Responsibility of Station Master as to authority to proceed.—The Station Master must see that the authority to proceed delivered to an

* This entry may be omitted or modified to suit the requirements of those administrations which do not use a "private number" or which use a "private code" instead.

Engine Driver is accurate, and that, when it is in writing, it is complete and is signed in full and in ink.

220. Authority to proceed when to be delivered to Engine Driver stopping at station.—If the train stops at the station, and is waiting to pass another train, the authority to proceed shall not be delivered to the Engine Driver, until the whole of the latter train has come in and is clear of the running road for former train.

221. Who to deliver authority to proceed to Engine Driver.—An authority to proceed shall not be delivered to the Engine Driver, except by the Station Master or by some railway servant appointed in this behalf by special instructions.

222. Delivery of authority to proceed when there are two Engine Drivers.—If two engines are coupled together, or if one engine is in front and another in rear of the train, the authority to proceed shall be delivered to the Driver of the leading engine.

223. Examination by Engine Driver of Authority to proceed.—
(1) The Engine Driver must see that the authority to proceed is accurate and applies to the section which he is about to enter, and, if the said authority is a ticket, that it is complete and is signed in full and in ink.

(2) If the conditions mentioned in sub-rule (1) are not complied with, the Engine Driver shall not take his train past or from the station, until the mistake or the omission is rectified.

CHAPTER XIV.

RAILWAY SERVANTS GENERALLY.

224. Supply of copies or translations of Rules.—(1) The authorized officer shall supply—

- (a) to each station, and to each Locomotive Running Shed, a copy in English of the Rules for the time being in force on the railway concerned under Section 47 of the Indian Railways Act, IX of 1890; and
- (b) to each railway servant on whom any definite responsibility is placed by the said rules, and who understands English, a copy of the said Rules, or a copy of such portions thereof as relate to his duties.

(2) The authorised officer may, at his discretion, supply to any railway servant, who does not understand English, a translation, in a language which he understands, of the said Rules, or of such portions thereof as relate to his duties.

225. Production of Rules.—Every Railway servant who has been supplied under Rule 224 with a copy or translation of Rules, must produce the same on the demand of any of his superior officers.

226. Application for new copy of Rules.—If any such copy or translation supplied to any railway servant should be lost or defaced, he must apply to his immediate superior for a new one.

227. Acquaintance with Rules.—Every railway servant, whether supplied or not with a copy or translation of the rules relating to his duties, must make himself acquainted with such rules; and the Railway Administration must see that he does so.

228. Assistance in carrying out Rules, and report of breaches.—Every railway servant must assist, wherever necessary, in carrying out the rules for the time being in force under section 47 of the Indian Railways Act, IX of 1890, and must report forthwith to his superior any breach thereof which may come to his notice.

229. Prompt obedience to orders.—Every railway servant must promptly obey all lawful orders given by any person placed in authority over him.

230. Hours of attendance for duty.—Every railway servant must be in attendance for duty at such times and for such periods as may be fixed in this behalf by the railway Administration, and must also attend at any other times at which his services may be required.

231. Absence from duty.—(1) No railway servant shall, without the permission of his superior officer, absent himself from duty, or alter his appointed hours of attendance, or exchange duty with any other railway servant.

(2) If any railway servant desires to absent himself from duty on the ground of illness, he must immediately report the matter to his superior officer, and shall not leave his duty until a competent person has been placed in charge thereof.

232. Obtaining spirituous or fermented liquor at stations.—No railway servant directly connected with the working of trains shall, when on duty or in uniform, obtain spirituous or fermented liquor at any refreshment room at a station excepted in accordance with special instructions.

233. Conduct generally.—(1) The conduct of all railway servants must be prompt, civil and obliging.

(2) Every railway Servant must at all times afford every proper facility for the business to be performed, and be careful to give correct information.

234. Duties for securing safety.—(1) Every railway servant shall be bound—

(a) to see that every exertion is made for ensuring the safety of the public,

(b) promptly to report to his immediate superior any occurrence affecting the safe or proper working of the railway which may come to his notice, and

(c) to render on demand all possible assistance in case of an accident or obstruction.

2. Every railway servant who observes—

(i) that any signal is defective, or

(ii) any obstruction, failure or threatened failure of any part of the way or works, or

(iii) anything wrong with a train, or

(iv) any unusual circumstance likely to interfere with the safe running of trains, or the safety of the public

must take immediate steps, such as the circumstances of the case may demand, to prevent accident; and, where necessary, must advise the nearest Station Master by the quickest possible means.

235. Consent required before interfering with signal.—No railway servant shall interfere with any signal or its fittings or connections for the purpose of effecting repairs or for any other purpose, except with the previous consent of the Station Master or other railway servant in charge of the working of the signal.

236. Knowledge and possession of hand signals.—Every railway servant employed on or connected with shunting operations of any nature, or the movement of trains must—

(a) have a correct knowledge of hand signals, and

(b) have the requisite hand signals with him while on duty.

237. Signal lamps.—Every railway servant in charge of signals must see that the greatest care is taken in the cleaning, trimming, and lighting of signal lamps.

238. Leaving vehicle in sidings outside station limits.—No railway servant shall leave any vehicle in a siding outside station limits, unless the vehicle is clear of all running roads and, except under special instruction, unless the wheels thereof are properly secured.

239. Obstruction of line.—No railway servant shall commence any loading, shunting or other operation by which any running road may be fouled or obstructed, without obtaining the previous sanction of the Station Master, or of some railway servant appointed in this behalf by special instructions, who must see that all necessary steps are taken for the protection of traffic while such operation is being carried on.

240. Preparation for running of trains.—The staff must always be prepared, without previous notice, for the running of trains.

241. Finding of lost articles.—Any railway servant who finds on the railway or in any vehicles any article (whether belonging to the railway Administration or to a private owner) which appears to have fallen from a train or to have been lost, must immediately deliver or send such article to the nearest Station Master, to be dealt with in accordance with special instructions.

242. Notice before leaving service.—Every railway servant shall before leaving the service, give the Railway Administration the notice specified in his agreement (if any), or if no notice is so specified, then one month's notice in writing.

243. Surrender of railway property on leaving service.—When a railway servant leaves the service he must deliver up to the Railway Administration, or to a person appointed by the Railway Administration in this behalf, any property in his custody which belongs to the Railway Administration.

CHAPTER XV.

STATION MASTERS.

244. Responsibility of Station Master for working.—(1) The Station Master shall be responsible for the efficient discharge of the duties devolving upon the several members of the staff employed, either permanently or temporarily, under his orders, at the station or within station limits; and such staff shall be subject to his authority and directions in the working of the station.

(2) The Station Master shall also be responsible that the general working of the station is carried out in strict accordance with the rules for the time being in force.

245. Responsibility for the whole working machinery.—The station Master shall see that all signals, all points, all gates of level-crossings, and the whole working machinery of his station are in proper working order, and shall immediately report all defects therein to the proper authority.

246. Signal Boxes.—The Station Master—

- (a) must make himself thoroughly acquainted with the duties of the staff employed in the signal boxes, if any, at his station and must satisfy himself that they perform their duties correctly; and
- (b) in order to maintain an effectual supervision over the said staff, must frequently visit the signal boxes.

247. Switches, points, facing points and signals.—The Station Master must take steps to ensure—

- (a) that the switches of all traps, slip-sidings and catch-sidings when it is not necessary that they should be open, are set against the line which they are intended to protect;

- (b) that all points are correctly set, in accordance with special instructions, for the passage of trains or vehicles, and that all facing points are securely locked for the passage of running trains; and
- (c) that all signals at his station are correctly worked.

248. Signal lamps.—(1) Whenever any train is timed to run, or is expected to run, on any portion of the line at night, the Station Master must see that all the fixed signal lamps are lighted at sunset, or at such earlier time as may be prescribed by special instructions.

(2) The Station Master must see that the fixed signal-lamps, when lighted, are burning brightly, that the spectacle glasses are properly cleaned, and that the back-lights are clearly visible.

(3) Whenever night signals have to be used in accordance with these rules, the Station Master shall not grant permission to approach, unless the lamps of the fixed signals at his station which apply to the train are burning brightly.

(4) The Station Master must see that the fixed signal lamps are not put out until broad day-light, except in accordance with special instructions.

249. Equipment of Station for hand-signalling.—The Station Master must see that his station is adequately supplied with all necessary equipment for hand-signalling

250. Daily inspection of Station.—The Station Master shall daily inspect the station, and see that all rooms, offices, platforms, latrines and other appurtenances are kept neat and clean.

251. Responsibility of Station Master for property.—The Station Master of a station shall be responsible for the security and protection of the property of the Railway Administration at the station.

252. Responsibility of Station Master before giving permission to start train.—The Station Master must see before he gives the Guard permission to start a train, that all is right for the train to proceed.

253. Examination of trains before starting.—When a train is examined by a Carriage and Wagon Examiner at a station, the Station Master shall not give permission to start the train until he has received a report from such Examiner, to the effect that the train is fit to proceed.

254. Tail-lamps and tail-boards of passing trains.—(1) The Station Master must see that every train passing through the station is provided with a tail-board or tail-lamp on the last vehicle.

NOTE.—If a tail-board or tail-lamp be not available, a red flag or other device may be used in accordance with special instructions.

(2) If by day the tail-board or tail-lamp be missing or if by night the tail lamp be out or be missing, the Station Master must immediately advise

station ahead to stop the train to see that the defect is remedied and to reply, saying whether the train is complete or not.

255. Supply of rules, and distribution or exhibition of other documents.—The Station Master must see—

- (a) that every railway servant subordinate to him who should be supplied with a copy or translation of these Rules, under Rule 221, duly receives the same;
- (b) that the Working Time-table in force, together with all corrigenda and with the appendix thereto (if any), working instructions, and other notices having reference to the working of the line, are properly distributed or exhibited as may be required;
- (c) that both the English and Vernacular sheet time-table and fare-lists are correctly exhibited, at all stations where traffic is booked and
- (d) that the Indian Railways Act IX of 1850, and Goods and Coaching Tariffs are available for inspection by the public.

256. Obedience to orders, and keeping of books and returns.—The Station Master shall see that all orders and instructions are duly conveyed to the staff concerned and are properly carried out, and that all books and returns are regularly written up and neatly kept.

257. Behaviour of railway servants.—The Station Master must see that all railway servants at his station behave respectfully and civilly to the public and to passengers of every class.

258. Assistance to passengers.—(1) The Station Master must see that each member of the platform staff is acquainted with the times of arrival and departure of all passenger trains, so as to render information to the public when required.

(2) Upon the arrival at a station of a train carrying passengers, the Station Master must see that the station servants pay immediate attention to any indication shown by passengers of their desire to receive assistance.

259. Report of neglect of duty.—The Station Master shall report, without delay, to his immediate superior all neglect of duty on the part of any railway servant who is under his orders.

260. Shunting.—The Station master must see that the shunting of trains or vehicles is carried on only at such times and in such manner as will not involve danger.

261. Securing of vehicles at stations.—The Station Master must see that vehicles standing at the station are properly secured, in accordance with special instructions.

- (d) a hand signal lamp,
- (e) a whistle,
- (f) a red flag and a green flag, and
- (g) such other articles, including a sufficient supply of detonators, as may be prescribed by the Railway Administration in this behalf.

(2) If any Guard is not in possession of any article mentioned or referred to in sub-rule (1), he must report the fact to the Station Master of his head-quarters station, whose duty it shall be to make good any deficiency.

269. Permission to start from station.—(1) The Guard in charge of a train shall not give the signal for starting the train from a station at which it has stopped, until he has received permission from the Station Master.

(2) The Guard in charge of a train with passenger vehicles attached shall not give the signal for starting, until he has satisfied himself that no passenger is getting into or out of the train, that no person is riding outside a carriage, and that, except in accordance with special instructions, no person is travelling in any compartment or vehicle not intended for the carriage of passengers.

270. Guard to examine notices before starting.—Every Guard, before starting with his train, must examine the notices issued for his guidance, and ascertain therefrom whether there is anything requiring his special attention, on the parts of the line over which he has to work.

271. Duties of Guard before starting a train and during the journey.—The Guard when taking over charge of a train must satisfy himself, before the train is despatched,—

- (a) that the train is properly coupled,
- (b) that the train is provided with the prescribed brake-power,
- (c) that the doors of all carriages and wagons are properly closed,
- (d) that the train carries all necessary tail-boards and brake-van lamps, and that such lamps are lighted and kept burning brightly when required,
- (e) that the appliance, if any, for communication between the Guard and the Engine Driver is in proper working order, and
- (f) generally, that, as far as he can ascertain, the train is in a state of efficiency for travelling.

272. Setting watch.—Before a train starts from a terminal or engine-changing station, the Guard in charge must set his watch by the station clock and communicate the time to the Engine Driver.

273. Passengers.—Every Guard shall give his best assistance to passengers entraining and detraining.

274. Exchange of Signals between Guard and Engine Driver.—The Guard in charge of a train must exchange signals with the Engine Driver at such times and in such manner, as may be prescribed by special instructions.

275. Guard to keep a good look-out.—Every Guard must keep a good look-out while the train is in motion, and must satisfy himself from time to time that the tail-board or tail-lamp is in position, that all brake-van lamps if required, are burning brightly, that the train is complete in every respect and is proceeding in a safe and proper manner.

276. Attracting attention of Engine Driver.—(1) If any Guard sees reason to apprehend danger, or considers it necessary for any reason to stop the train, he must use his best endeavours to attract the attention of the Engine Driver,

(2) In the absence of other means of communication with the engine, a Guard desiring to attract the Engine Driver's attention must apply his hand brake sharply and must as suddenly release it.

(3) When the attention of the Engine Driver has been attracted, the necessary Danger signal must be shown.

(4) If the train is fitted with a continuous brake, the Guard may, in case of emergency apply such brake to stop the train.

277. Application of Guard's brakes.—(1) When the Engine Driver sounds three or more short, sharp whistles, or the brake whistle, the Guard must immediately apply their hand brakes.

(2) When a train is travelling down a steep incline, the Guards must, if necessary to steady the train, assist the Engine Driver with their brakes.

278. Guard to see that train is stopped clear of fouling points.—when a train comes to a stand at a station the guard must see that, whenever possible, the last vehicle of his train has cleared the fouling points of all points and crossings.

279. Detaching engine.—Whenever a train has been brought to a stand, and it is necessary for the engine, with or without vehicles, to be detached from the rest of the train, the Guard in charge of the train must, before the train is uncoupled, satisfy himself that the van-brakes have been put on securely and take such other measures as may be prescribed by special instructions.

280. Loads on open trucks.—The Guard in charge of a train must, unless this duty is, by special instructions, imposed on some other railway servant, carefully examine the load of any open truck which may be attached to the train, and, if any such load has shifted or requires adjustment, must have the load made secure or the truck removed from the train.

281. Coolies on ballast train.—Guards in charge of ballast trains must, before giving the signal to start, see that all the coolies are on the train, and must warn them to sit down.

282. Guard not to leave train till handed over.—No Guard in charge of a train shall leave it, until it has been properly handed over, in accordance with special instructions.

CHAPTER XVII.

ENGINE DRIVERS AND FIREMEN.

ENGINE DRIVER AND FIREMAN.

283. Engine driver and Fireman when to attend.—The Engine Driver and Fireman must be with their engine at such time previous to the starting of the train as may be ordered by the authorised officer.

284. Manning of engine in motion.—Except when otherwise provided by special instructions, no engine shall be allowed to be in motion on any running road unless both the Engine Driver and the Fireman are upon it.

285. Riding on Engine or tender.—Except in accordance with special instructions no person other than the Engine Driver and the Fireman shall ride on the engine or tender.

286. Fireman to obey Engine Driver.—The Fireman must obey the orders of the Engine Driver in all particulars.

287. Engine Driver and Fireman to keep a good look-out.—Every Engine Driver must keep a good look-out while the train is in motion, and every Fireman must also do so when he is not necessarily otherwise engaged.

288. Engine Driver and Fireman to look back.—The Driver and the Fireman must frequently during the journey look back to see whether the train is following in a safe and proper manner.

289. Throwing out water, fire or cinders.—An Engine Driver or Fireman shall not throw out water, fire or cinders when passing through a station yard or tunnel, or when on a bridge.

ENGINE DRIVER.

290. Engine Driver's equipment.—Every Engine Driver must have with him, while on duty with his train,—

- (a) a copy of the rules for the time being in force on the railway concerned under section 47 of the Indian Railways Act, IX of 1890, or of such portions of them as have been supplied to him under Rule 224;

ENGINE DRIVER—(contd.)

- (b) a copy of the Working Time Table in force with all corrigenda and with the appendix thereto (if any) on the lines over which the train is run; and
- (c) the equipment and stores prescribed by the Railway Administration in this behalf.

291. Engine Driver to examine engine before starting.—The Engine Driver must, before starting, satisfy himself that his engine is in proper working order.

292. Duties of Engine Driver as regards Engine Lamp and Discs.—The Engine Driver must, before starting, see that the proper engine lamps and discs (if provided) are shown, and must see that the lamps are kept burning brightly at night and in thick or foggy weather.

293. Setting watch.—The Engine Driver must, before starting set his watch to the correct time, as given to him by the Guard in charge of the train.

294. Engine Driver to examine notices before starting.—Every Engine Driver must, before starting, examine the notices issued for his guidance, and ascertain therefrom whether there is anything requiring his special attention on the parts of the line over which he has to work.

295. Duty of Engine Driver unacquainted with line.—If an Engine Driver is not acquainted with any portion of the line over which he has to work, he must obtain the services of a qualified railway servant who is acquainted with it, to assist him.

296. Permission & signals, before entering on or crossing running road.—No Engine Driver shall take his engine on or across any running road, until he has obtained the permission of the Station Master and has satisfied himself that the correct signals have been shown.

297. Engine Driver not to start without Guard's signal.—The Engine Driver shall not start from a station an engine with vehicles attached, until the Guard in charge of the train has given the signal to start,

298. Moving of train carrying passengers, after it has been stopped at station.—When a train carrying passengers has been brought to a stand at a station, whether alongside, beyond or short of the platform, the Engine Driver shall not move it, except under orders of the Guard in charge of the train or to avert an accident.

299. Engine Driver to satisfy himself that correct signals are shown and line is clear.—The Enging Driver must, before starting his train satisfy himself that the correct signals are shown and that the line before him is

ENGINE DRIVER.—(contd.)

300. Sounding the Engine-Whistle.—Except under special instructions, the Engine Driver must always sound the engine-whistle—

- (a) before putting an engine in motion;
- (b) when entering a tunnel; and
- (c) at such other times as may be prescribed.

301. Engine Driver to obey certain orders.—After an engine has been attached to a train and during the journey, the Engine Driver must obey—

- (a) the orders of the Guard in charge of the train in all matters affecting the starting, stopping or movement of the train for traffic purposes; and
- (b) all orders given to him by the Station Master or any railway servant acting under special instructions, so far as the safe and proper working of his engine will admit.

302. Regulation of speed.—The Engine Driver must regulate and control the running of his train as accurately as possible, according to the Working Time Table, so as to avoid either excessive speed or loss of time; and he shall not make up between any two stations more time than is allowed in this behalf by special instructions.

303. Starting and stopping train.—The Engine Driver must start and stop his train carefully and without jerk.

304. Proper running Road.—(1) The Engine Driver must take his train along the proper running road.

(2) In the case of an ordinary double line, the "proper running road" is the left hand road in the direction in which the engine is travelling.

305. Exchange of signals between Engine Driver and Guard.—The Engine Driver must exchange signals with the Guard in charge of the train, at such times and in such manner as may be prescribed by special instructions.

306. Assistance from Guard's brake.—When the Engine Driver requires the assistance of the Guard's brake, he must give three or more short, sharp whistles, or, if a brake-whistle is provided, sound such whistle, and must in either case apply the communication, if any.

307. Engine Driver to see that train is stopped clear of fouling points.—When a train comes to a stand at a station, the Engine Driver must see that, whenever possible, his engine is clear of the fouling points of all points and crossings.

308. Shutting off steam.—In stopping a train, the Engine Driver must determine where to shut off steam by paying particular attention to the gradient

ENGINE DRIVER—(contd.)

the state of the weather, the condition of the-rails, and the length and weight of the train.

309. Permission of Guard to detaching of engine from train.—When a train not fitted with the continuous brake has been brought to a stand outside station limits or on a grade, the Engine Driver shall not detach his engine from the train without the permission of the Guard in charge of the train.

310. Hose or water-crane.—After taking water from a tank or water column, the Engine Driver must see that the hose or water crane is left clear of the line and, when it is provided with fastenings, properly secured.

311. Engine Driver not to leave engine when on duty.—No Engine Driver shall leave his engine when on duty, whether at a station or on the running road, except in case of absolute necessity and after a competent man has been placed in charge of it.

ATTENTION TO SIGNALS.

312. Engine Driver to obey signals, and to be vigilant and cautious.—(1) The Engine Driver must pay immediate attention to and obey every signal, whether the cause of the signal being shown is known to him or not.

(2) He shall not, however, trust entirely to signals but must always be vigilant and cautious.

313. Duty of Engine Driver as to signals when two or more engines are attached to train.—When two or more engines are attached to a train, the Driver of the leading engine shall be responsible for observing signals, and the Driver of the other Engine or engines shall watch for and take signals from the Driver of the leading engine.

314. Duties of Engine Drivers when Stop signals is "on" or defective.—The Driver of a running train shall not pass a Stop signal that refers to him when it is "on" or defective—

- (a) unless he has, at a previous station, received notice in writing specifying that the signal is out of order, and unless he is also signalled past by a man standing at the signal; or
- (b) unless, after coming to a stand, he either is given written permission to proceed from the Station Master, or is called on by a Calling-on signal, or is piloted past the defective signal by a railway servant, authorised in this behalf, who shall travel on the engine.

Explanation—If an Engine Driver has not received a notice in writing that the Stop signal is defective, he must stop, and shall pay no heed to any other signal (whether a hand signal or not) that may be shown, until he is allowed to proceed under one of the authorities mentioned above.

ATTENTION TO SIGNALS—(contd).

315. Duties of Engine Driver when the All right or Proceed with Caution signal is shown—When the All right signal is shown to a train, the engine Driver may proceed at such speed as may be prescribed by special instructions.

(2) When the proceed with Caution signal is shown to a train by gangers or other workmen employed on the permanent-way, the speed of the train over the portion of the running road protected by such signal shall not exceed fifteen miles an hour, or such lower rate as may be prescribed in this behalf by special instructions.

(3) When the Proceed with Caution signal is shown to a train by any railway servant not referred to in sub-rule (2), the Engine Driver must reduce speed.

316. Duties of Engine Driver when engine explodes detonator—

(1) When an engine explodes a detonator, the Engine Driver must immediately reduce speed and be guided by the signals that he may receive.

(2) If no hand or other signals are at once visible to the Engine Driver, he must immediately bring his train to a stand, and may then—

(a) If it is day, and he has a clear view of the road, proceed very cautiously at such reduced speed as will enable him to stop short of any Danger signal or obstruction; or

(b) If it is day, and he has not a clear view of the road, or if it is night, or if the weather is thick or foggy—proceed very cautiously on hand signals given by the Guard in charge of the train (or the Fireman, if there is no Guard), who must walk ahead of the engine for this purpose; and

(c) if, within a distance of one mile from the point where the explosion occurred, he meets no further detonators and sees no signals—resume ordinary speed.

317. Non-showing, or imperfect showing, of fixed signal.—(1) If there is no fixed signal at a place where a fixed signal is ordinarily shown, or if a fixed signal is imperfectly shown, the Engine Driver must act as if a Danger signal were shown.

(2) The exhibition of a red over green light, or the corresponding position of the arms by day, or the absence of one or both lights shows that the signal is out of order, and should be treated as a Danger signal, see Rule 314.

318. Precautions when view of signal is obstructed.—If, in consequence of a fog or storm or for any other reason, the view of signals is obstructed, the Engine Driver must take every possible precaution, especially when approaching a station or junction, so as to have the train well under control.

CHAPTER XVIII.

POINTS MEN AND SIGNALMEN.

319. Points to be kept clean and clear.—Every Pointsman must keep the points under his charge clean and clear of stones or other obstacles.

320. Report when points, etc., are damaged.—Whenever points, crossings or guard-rails are damaged, the Pointsman in charge must protect them and immediately arrange to report the circumstances to the Station Master.

321. Pointsmen and signalmen not to leave signals.—A Pointsman or Signaller shall not, while on duty, leave the points or signals which are under his charge.

CHAPTER XIX.

RAILWAY SERVANTS EMPLOYED ON THE PERMANENT-WAY OR WORKS.

322. Condition of Permanent-way and Works.—Each Inspector of Permanent-way shall be responsible for the condition of the Permanent-way and Works in his district.

323. Maintenance of line.—Each Inspector of Permanent-way must—

- (a) see that his length of line is efficiently maintained, and
- (b) promptly report to the Engineer-in-Charge all accidents to or defects in the way or works which he may consider likely to interfere with the safe running of trains.

324. Keeping of Permanent-way material.—Each Inspector of Permanent-way must see to the security of all rails, chairs, sleepers and other permanent-way material in his district, and that such of the said articles as are not actually in use are kept clear of the line and properly stacked.

325. Inspection of Permanent-way and Works.(1) Every portion of the permanent-way must be inspected daily on foot by some railway servant appointed in this behalf by special instructions.

(2) All bridges and works in charge of the Engineering Department, including signals, signal wires, points and crossings, must regularly be inspected, in accordance with special instructions.

326. Supply of documents to Inspector and Sub-Inspector of Permanent-way.—Each Inspector and Sub-Inspector of Permanent-way shall be supplied with and be responsible for obtaining—

- (a) a copy of the Working Time-table for the time being in force, with all corrigenda and with the appendix thereto (if any); and
- (b) a copy of the schedule of Standard Dimensions, for the time being in force under the orders of the Railway Board.

327. Ganger in each gang.—Each Inspector of Permanent-way must see that in every gang employed in his length of line there is a competent Ganger.

328. Knowledge of signals and equipment of gang.—Each Inspector of Permanent-way must see—

- (a) that every Ganger employed under him has a correct knowledge of hand signals and detonating signals; and
- (b) that every gang employed in his length of line is supplied with a Permanent-way gauge, two sets of flag signals, two hand signal lamps and twelve detonators, in addition to such other tools or implements as may be prescribed by special instructions.

329. Inspection gauges, signals, tools and implements.—(1) Each Inspector of Permanent-way must at least once in every month inspect the Permanent-way gauges, flags, signal lamps, detonators, tools and implements supplied to the gangs under Rule 328, clause (b), and ascertain whether the said gauges are correct, whether the said flags, signal lamps, detonators, tools and implements are in good order, and whether any of the said articles have been lost.

- (2) He shall also see that any defective or missing articles are replaced.

330. Responsibility of Ganger as to signals and safety of line.—Each Ganger must see—

- (a) that the signals supplied to him under Rule 328, clause (b), are kept constantly in proper order and ready for use;
- (b) that the men in his gang each have a correct knowledge of hand signals and detonating signals; and
- (c) that his length of line is kept safe for the passage of trains.

331. Trespassing.—Each Ganger must endeavour to prevent any trespassing by persons or cattle on his length of line or within the fences thereof.

332. Fire.—If a fire occur on any railway premises, at or near any portion of the railway where gangmen are employed, they must endeavour to extinguish it to prevent it from spreading.

333. Work involving danger to trains or traffic.—A gang shall not commence or carry on any work, which will involve danger to trains or to traffic, without the previous sanction of the Inspector of Permanent-way, or of some competent railway servant, appointed in this behalf by special instructions; and the railway servant, who gives such sanction, must himself be present to superintend such work, and shall see that the provisions of Rules 337, 339 and 340 are observed;

Provided that, in cases of emergency, when it may be necessary for safety to commence any such work before said railway servant can arrive, the Ganger may commence work at once, and must himself see that the provisions of Rule 340 are observed.

334. Work in thick or foggy weather.—In thick or foggy weather, no rail shall be displaced, and no other work which is likely to cause obstruction to the passage of trains shall be performed, except in case of absolute necessity.

335. Blasting.—No railway servant employed on the way or on any works shall carry on any blasting operations on or near the railway except as permitted by special instructions.

336. Putting in or removing points or crossings.—Except in cases of emergency, no railway servant shall put in or remove any points or crossings, otherwise than as permitted by special instructions.

337. Presence and responsibility of Ganger.—When repairing, lifting or lowering the line outside station limits, or when performing any other operation outside station limits, which will make it necessary for a train to proceed cautiously, the Ganger must himself be present at the spot, and shall be responsible that the caution signals prescribed in Rule 340 are shown.

338. Duties of Ganger when apprehending danger.—If a Ganger considers that the line is likely to be rendered unsafe, or that any train is likely to be endangered, in consequence of any defect in the way or works or of abnormal rain or floods or any other occurrence, he must take immediate steps for securing the stability of the line and the safety of trains, by using the prescribed signals for trains to "Proceed with Caution" or to "Stop," as necessity may require; and shall as soon as possible report the circumstances to the nearest Station Master, the Inspector of Permanent-way and the Sub-Inspector (if any).

339. Precautions before commencing operation which would obstruct the line.—No person employed on the way or works shall commence any operation, such as changing or turning a rail, which would obstruct the line and necessitate the showing of Danger signals,—

(a) until such signals have been shown, and,

(b) if within station-limits, until he has also obtained the permission of the Station Master and all necessary signals have been placed "On."

340. Showing of signals.—(1) When "proceed with Caution" hand signals have to be shown, a man shall be sent, if on a double line, in the direction from which trains approach, and, if on a single line, in each direction, at least a quarter of a mile and as much further as the circumstances of the case may render necessary to show these signals in such a manner as to be plainly visible to the Driver of an approaching train.

(2) Another such signal shall also be shown at the spot where cautious driving is required, and a "Proceed" signal shall be shown to the Engine Driver as soon as the train has cleared the portion of the line over which cautious driving was necessary.

(3) When Danger signals have to be shown under this Chapter, they must be shown at an adequate distance (to be prescribed by special instructions) in both directions from the place of obstruction, except where only one road on a double line of railway is affected, in which case the signal need only be shown in the direction from which trains approach on that road.

(4) Danger signals must also be shown near and short of the point of danger.

(5) Danger signals must be supplemented by detonators in the manner prescribed in Rules 36 to 40.

341. Protection of train.—Every railway servant employed on way or works shall, on the requisition of the Guard in charge of a train or the Driver thereof, render assistance under Rule 36 for the protection of the train.

LORRIES AND TROLLIES.

342. Distinction between trollies and lorries.—(1) For the purposes of the following rules in this Chapter, a vehicle which can be lifted bodily from the line by four men shall be deemed to be a trolley, and any similar but heavier vehicle shall be deemed to be a lorry.

(2) A trolley shall not, except in case of emergency, be used for the carriage of permanent-way or other heavy material; and, when a trolley, is so loaded, it shall be deemed, for the purposes of these Rules, to be a lorry.

343. Railway servant to be in charge of lorry or trolley when on the line.—(1) No lorry or trolley may be placed on the line, except by a railway servant appointed in this behalf by special instructions.

(2) Such railway servant shall accompany the lorry or trolley, and shall be responsible for its proper protection and for its being used in accordance with special instructions.

344. Attachment to train prohibited.—No lorry or trolley shall be attached to a train.

345. Time of running.—A lorry shall ordinarily be run only by day and when the weather is sufficiently clear for a signal to be distinctly seen from a distance of half a mile.

346. Red flag or light to be shown.—Every lorry or trolley when on the line must show a red flag by day and a red light by night, in the directions from which any train may come.

LORRIES AND TROLLIES—(contd).

347. Protection of trolly on the line.—The railway servant in charge of a trolly shall, before leaving a station, ascertain the whereabouts of all approaching trains, and shall, when a clear view for an adequate distance—

(a) on a single line, in both directions, or

(b) on a double line, in the direction from which trains may approach, is not obtainable, take such precautions for the protection of his trolly as may be prescribed by special instructions.

348. Protection of lorry on the line.—(1) Whenever it is proposed to place a lorry, whether loaded or empty, on the line, the line shall, if it is possible to do so without interference with the working of trains, be blocked under the rules for working trains.

(2) When the line has not been so blocked, and a lorry, whether loaded or empty, is placed on the line, the lorry must be protected—

(a) on a double line by a man either following or preceeding the lorry at a distance of not less than half a mile in the direction from, which trains may approach, and plainly showing a danger hand signal; or

(b) on a single line, by a man following and a man preceeding the lorry at a distance of not less than half a mile and plainly showing a danger hand signal;

and the men so following or preceeding the lorry—

(i) must be furnished with detonators, and must place two on the line, ten yards apart, immediately the lorry comes to a stand for the purpose of either unloading or loading, and

(ii) must continue to show the Danger hand signal and keep the detonators on the line until a messenger arrives with an order from the Ganger or other person in charge of the operation to withdraw the signal, and

(iii) in any case should any train be seen approaching, must immediately place the detonators on the line, unless they have received orders to withdraw the Danger Signal.

349. Lorries and trollies out of use.—A lorry or trolly, when not in use, must be placed clear of the line, and the wheels must be secured with a chain and padlock.

CHAPTER XX.

GATEMEN.

350. Knowledge of signals.—No person shall be appointed to be a Gateman unless he has a knowledge of signals.

351. Supply and care of hand signals.—Every Gateman must—

- (a) be supplied with day and night hand signals, and
- (b) keep such signals in proper order and ready for use.

352. Road traffic.—(1) Where the gates at a level-crossing are not made to close across the line, the Gateman must, when such gates are opened for road traffic, be prepared to show a Danger signal to any approaching train.

(2) Where there is no Gateman specially on night duty at a level-crossing, the gates must be locked at night, except when opened for the passage of road traffic.

(3) When the gates are closed to the passage of road traffic, they must be kept securely fastened across the thoroughfare until the train has passed.

(4) Unless otherwise directed by special instructions, all gates at level-crossing must be kept open for the passage of trains and securely closed across the thoroughfare and shall only be closed to the passage of trains when it is necessary to open them for the passage of road traffic.

353. Channel for flange of wheels.—The Gateman on duty must see that the channel for the flange of the wheels is always clear before the passage of each train.

354. Report of defects.—If any gate, or the fastenings thereof, or any fixed signal pertaining to the gate, should get out of order, the Gateman must, as soon as possible, report the fact to his immediate superior or to the nearest Ganger.

355. Obstructions.—Every Gateman, on noticing any obstruction on the line must at once remove it, or, if unable to do so, must show Danger signals and do his best to stop approaching trains.

356. Parting of a train.—If a Gateman notices that a train has parted, he shall not show a Danger signal to the Engine Driver, but must endeavour to attract the attention of the Engine Driver and Guard by shouting and gesticulating.

357. Trespassing.—Every Gateman must, as far as possible, prevent any trespassing by persons or cattle.

358. Transfer of charge of gate.—Except in accordance with special instructions, no Gateman shall leave his gate unless another Gateman has arrived to take charge of it.

CHAPTER XXI.

PENALTIES.

350. Penalties.—(1) If any railway servant commits a breach of any of the rules hereinafter mentioned, he shall be liable to punishment as follows, namely:—

*Rules.**Penalty.*

5, 29 to 33 (both inclusive), 35 (1), 36 to 38 (both inclusive), 40, 49, 50 (1), 56 to 64 (both inclusive), 81 to 92 (both inclusive), 92 to 114 (both inclusive), 115 (1), 116 to 120 (both inclusive), 121 (2); 122 to 126 (both inclusive), 129, 130, 133, 134, 136 to 145 (both inclusive), 148, 149, 151, 153, 154 (1), 154 (3), 154 (4), 155, 157 (1), 157 (3), 157 (5), 160 to 163 (both inclusive), 166, 167 (2), 169 (2), 170 (2), 171 (1), 172, 173 (2), 175 (2), 177 to 180 (both inclusive), 181 (proviso), 185, 186, 189, 190 (2), 192 (2), 193 (2), 193 (3), 194 (1), 195, 196 (2), 198 to 200 (both inclusive), 201 (3) to 206 (both inclusive), 207 (2), 209 to 212 (both inclusive), 213 (proviso), 214 to 216 (both inclusive), 218 to 223 (both inclusive), 227, 228, 230, 234 (1) (a) 234 (1), (b), 234 (2), 235 to 239 (both inclusive), 245, 246 (b), 247, 248, 250, 252 to 256 (both inclusive), 260 to 262 (both inclusive), 264, 269, 271, 274, 276 to 282 (both inclusive), 284, 291, 292, 295 to 311 (both inclusive), 312 (1), 313, 314, 315 (2), 315 (3), 316 to 318 (both inclusive), 321, 323, 324, 327, 328, 329 (1), 333 to 337 (both inclusive), 339, 340, 343 to 349 (both inclusive).

Fine which may extend to fifty rupees.

58, 65, 68, 69, 152, 234 (1) (c), 241, 249, 268, 285, 289, 290, 325.

Fine which may extend to twenty-five rupees.

39, 319, 320, 330, 338, 341, 351, (b), 352 to 356 (both inclusive), 358.

Fine which may extend to ten rupees.

Fine which may extend to fifty rupees, and forfeiture of a sum not exceeding one month's pay which last sum may be deducted by the Railway Administration from the pay of railway

219, 231, 242

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<i>Rules.</i>	<i>Penalty.</i>
225, 226, 232, 233, 243	Forfeiture of a sum not exceeding one month's pay, which sum may be deducted by the Railway Administration from the pay of the Railway servant.

(2) Any railway servant who has committed a breach of any of the rules mentioned in sub-rule (1) of this rule shall be liable to the punishment authorised by that sub-rule in addition to, and not in substitution for, any punishment to which he may be liable upon prosecution under the Indian Railways Act, IX of 1890;

Provided that no railway servant shall be thereby render liable to be punished twice for the same offence.

PART II.

RULES FOR THE GUIDANCE OF PUBLIC AND RAILWAY OFFICIALS.

In exercise of the powers conferred by section 47 of the Indian Railways Act, IX of 1890, and by Notification No. 801, dated 24th March 1905, and in supersession of the Rules annexed to the resolutions of the Government of India in the Public Works Department, dated the 21st August 1880, the 19th April 1892, and the 12th March 1895, and of all other Rules made in this behalf, the Railway Board hereby make the following General Rules for the guidance of the public using lines of railway in British India administered by the Government and for the time being used for the public carriage of passengers, animals or goods, and for the guidance of railway officials employed on such lines.

PART II.

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12. Luggage in carriage with passenger.
13. Luggage insufficiently secured.
14. Penalties for breaches of rules by railway servants.

 CHAPTER III.

CARRIAGE OF OFFENSIVE OR DANGEROUS GOODS.

15. Articles declared to be "Offensive Goods."
16. { Acceptance of offensive goods for carriage.
Loading, unloading and handling of offensive goods.
Prepayment of freight on offensive goods.
17. Articles declared to be "Dangerous Goods."
18. Transport by rail of Explosives.
19. Conditions for conveyance by rail of dangerous goods.
20. Acceptance of dangerous goods for carriage.
21. { Vehicles to be used for dangerous goods.
Dangerous goods not to be loaded with Explosives or ordinary merchandise.
22. Power of Railway Administration to notify non-acceptance of any particular dangerous goods for carriage.
23. Handling and storage of dangerous goods.
24. One kind of dangerous goods, except "Inflammable liquids," to be packed into one case.
25. Notice to Railway of intention to despatch dangerous goods.
26. Particulars to be given in the Notice.
27. Consignment Note and Risk Note to be signed by owner before dangerous goods can be despatched by rail.
28. Acceptance of compressed Gases for carriage.
29. Dangerous goods to be kept in vehicles at destination till removed from Railway premises.

30. Loading, unloading and handling of dangerous goods by owners.
31. Handling of dangerous goods to be done by day-light.
32. Prepayment of freight on dangerous goods.
33. Storage and protection of dangerous goods at stations.
34. Certificate on Railway Invoice that Consignor has complied with requirements under these rules.
35. "Dangerous" label to be affixed to vehicles containing dangerous goods and vehicles to be kept locked and sealed.
36. Increase of quantity of Government consignment of dangerous goods in times of emergency and attaching of vehicles to Passenger or Mixed trains.
37. Application of rules to dangerous goods for carriage for Government or taken by members of the Military, Naval, Police or Volunteer service when on duty.
38. Smoking, or taking or leaving a naked light, unprotected lamp or inflammable article near dangerous goods prohibited.
39. Penalty for breach of rules.

CHAPTER IV.

OFFENCES BY PASSENGERS AND OTHER PERSONS.

40. Duties of Station Master in case of drunkenness or nuisance.
41. Smoking or having open light or fire on railway premises, or keeping open light or lighted lamp in carriage.
42. Exclusion of persons from railway premises.
43. Investigation by Station Master in case of offence by passenger.
44. Guards to prevent breaches of rules.
45. Arrests.

Appendix A.—The packing of and despatch of dangerous goods (other than explosives to which the rules for the time being in force under the Indian Explosives Act, 1884, apply.)

- (b) all necessary arrangements have been made in pursuance of Section 71* of the Indian Railways Act, IX of 1890, for the separation of the passenger and his attendants, during the whole time that they remain upon the railway, from other persons being or travelling upon the railway, and
- (c) any other special precautions which the railway servants giving the permission mentioned in the said section, may consider necessary, have been taken to prevent infection or contagion, being communicated to other persons being or travelling upon the railway.

DISINFECTION OF CARRIAGES.

9. **Disinfection of carriages.**—When any carriage has been entered by a person suffering from an infectious or contagious disorder, the carriage must be disinfected, in accordance with special instructions immediately after it has arrived at his destination; and no passenger shall be allowed to enter it until the disinfection has been completed.

LUGGAGE.

10. **Luggage to be booked.**—Each passenger's luggage must be booked:

Provided that any Railway Administration may dispense with the booking of any luggage which is taken into a carriage by a passenger in pursuance of Rule 12, clause (1).

11. **Free allowance of passengers' luggage.**—A certain quantity of each passengers' luggage, within a limit of weight to be fixed from time to time by the Railway Administration, shall be allowed free of charge, provided the passenger presents his luggage for weighment before the commencement of his journey.

12. **Luggage in carriage with passenger.**—(1) A passenger may take into a carriage only such small articles of personal luggage as are required for his own use on the journey and can be placed in the carriage without inconveniencing other passengers or reducing the available accommodation in the carriage.

* " 71 (1) A Railway Administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (1),

Power to refuse to carry persons suffering from infectious or contagious disorder.

clause (d), a person suffering from any infectious or contagious disorder.

(2) A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the Station Master or other railway servant in charge of the place where he enters upon the railway.

(3) A railway servant giving such permission as is mentioned in sub-section (2) must arrange for the separation of the person suffering from the disorder from other persons being or travelling upon the railway."

(2) A Railway Administration shall not be responsible for the loss, destruction or deterioration of any luggage taken into a carriage by, or by the direction of, a passenger.

13. Luggage insufficiently secured.—(1) A Railway Administration may refuse to carry, except under special agreement, any passenger's luggage which is improperly packed or locked or otherwise insufficiently secured, unless it is taken into a carriage by the passenger in pursuance of Rule 12, clause (1).

(2) A Railway Administration shall be not responsible, except under special agreement, for any loss, destruction or deterioration of any passenger's luggage caused by its having been improperly packed or locked or otherwise insufficiently secured.

14. Penalties for breaches of rules by railway servants.—

(1) If any railway servant commits a breach of rule 9, he shall be punishable with a fine which may extend to Rs. 50.

(2) Any railway servant who has committed a breach of rule 9, shall be liable to the punishment authorised by clause (1) in addition to, and not in substitution for, any punishment to which he may be liable upon prosecution under the Indian Railways Act, 1890;

Provided that no railway servant shall be thereby rendered liable to be punished twice for the same offence.

CHAPTER III.

I.—CARRIAGE OF OFFENSIVE GOODS.

15. The following goods shall be deemed to be offensive goods for the purposes of the Indian Railways Act, 1890, namely:—

- (1) Blood dried,
- (2) Bones,
- (3) Carcasses of dead animals,
- (4) Corpses,
- (5) Municipal or street sweepings or refuse,
- (6) Manures of any kind, except chemical manures,
- (7) Rags, other than oily rags.
- (8) Any decayed animal or vegetable matter.

16. Unless it be otherwise notified by the Railway Administration, consignments of offensive goods will only be accepted for conveyance by rail, subject to the following conditions, namely:—

- (1) that the loading, unloading and handling of the offensive goods is done by the consignors and consignees or their servants;
- (2) that freight is prepaid by the consignor.

II.—CARRIAGE OF DANGEROUS GOODS.

17. In addition to explosives, as defined in section 4 of the Indian Explosives Act, 1884, the following goods shall be deemed to be dangerous goods, for the purposes of the Indian Railways Act, 1890:—

I.—Inflammable Liquids—

Class A. Liquids the vapours of which have flashing points below 76° Fahr.

Class B. Liquids the vapours of which have flashing points at 76° Fahr., and higher temperatures.

Proviso (1). In ascertaining the flashing point of petroleum for the purposes of this rule, regard shall be had to the proviso to section 2 (b) of the Indian Petroleum Act, 1899.

Proviso (2). Lubricating oils having a flashing point at or above 200° Fahr., shall not be deemed to be dangerous goods for the purposes of this rule.

II.—Dangerous, Corrosive and Poisonous Chemicals.

III.—Miscellaneous dangerous articles.

18. The transport by rail of explosives, as defined in section 4 of the Indian Explosives Act, 1884, is regulated by rules made by the Government of India under that Act. Nothing in these rules applies to such explosives.

19. The dangerous goods specified in Schedule I, shall only be accepted for conveyance by rail or be conveyed by rail, subject to rules 20 to 35 below and in accordance with the conditions set forth in Schedule I against each specified class of goods.

20. No dangerous goods, other than those specified in schedule I hereto annexed, shall be accepted for conveyance by rail.

21. There is no restriction as to the maximum quantity of dangerous goods which may be despatched by goods train, but such goods shall be loaded in iron covered vehicles. The carriage of dangerous goods in the same goods vehicle with explosives or ordinary merchandise is prohibited, except where otherwise stated in column 4 of Schedule I.

22. Notwithstanding anything contained in rule 19, a Railway Administration may notify that it will not convey by rail for the public any particular dangerous goods specified in Schedule I. After the issue of such a notice no such dangerous goods shall be accepted for conveyance or despatch on any railway of the said Railway Administration.

23. Dangerous goods shall be carefully handled and shall not be stored in any of the Railway Administration's enclosed sheds or ware-houses.

24. Only one kind of dangerous goods and no other kind of goods shall be put into one case, except that different articles of "Inflammable Liquids—Class A" may be packed together.

Note.—The Indian Ordnance and Medical Departments, and the Stores Department of the India Office are exempt from this rule provided that a written declaration of the contents of the package is given by a duly authorised officer, and that it is certified on the consignment note that the goods have been packed in accordance with the departmental regulations relating to the packing of such goods.

25. Subject to any exceptions from time to time notified by the Railway Administration, no consignment of dangerous goods shall be accepted for conveyance by rail, unless previous notice of the intention to send such consignment has been given as prescribed in rule 26, and unless the officer in charge of the station from which it is proposed to despatch the consignment has intimated in writing, that the consignment can be received.

26. The notice required by rule 25 shall be addressed to the officer in charge of the station from which the goods are to be despatched and it shall be sent at least 48 hours before the consignment is sent upon such railway, unless a shorter period is prescribed by the Railway Administration concerned. It shall contain a statement of the following particulars, namely:—

- (1) the name and quantity of the dangerous goods in the consignment,
- (2) the name and address of the consignor;
- (3) the name and address of the consignee;
- (4) a declaration that the goods are packed in accordance with the directions contained in Schedule I.

27. No consignment of dangerous goods shall be despatched by rail unless the consignor has executed—

- (1) a consignment note on the form set forth in Schedule II of these rules, and
- (2) if the goods are booked at owner's risk, a risk note in Form D or in Form G. as set forth in Schedule III of these rules.

28. No consignment of Compressed Gases shall be accepted for conveyance by rail unless the consignor also furnishes a certificate in the form set forth in Schedule IV of these rules.

29. If, upon the arrival of any dangerous goods at their destination, the consignee does not take delivery of and remove the same within the time notified by the Railway Administration, they may be kept in the vehicle in which they were carried until delivery is effected, or until they are disposed of under the provisions of section 56 of the Indian Railways Act, 1890, or otherwise.

30. Unless it be otherwise notified by the Railway Administration, the loading, unloading and handling of all dangerous goods shall be done by consignors and consignees or their servants.

31. All handling of dangerous goods shall be done by daylight, provided that dangerous goods carried in passenger, mixed, tranship or road van trains may be handled at any time of the day or night.

32. Unless it be otherwise notified by the Railway Administration, the freight on all consignments of dangerous goods shall be prepaid.

33. It shall be the duty of every officer in charge of a station to cause every package of dangerous goods, which it is proposed to despatch by rail or which has been received at any station for transshipment or delivery to the consignee, to be stored at a safe distance from the station buildings, either in a covered vehicle or completely covered with tarpaulin or such other suitable material, so that it may not be exposed to the sun, and if necessary, to be protected by a police guard.

34. Every railway servant despatching any consignment of dangerous goods by rail shall certify on the invoice that the consignor has complied with rule 27, and, where the consignment consists of Compressed Gases, that the certificate required by rule 28 has been furnished by the consignor.

35. A "Dangerous" label, *i.e.* a white label with a red cross on it, shall be affixed to both sides of every vehicle in which dangerous goods are stored for delivery or transit and such vehicle shall always be kept locked and sealed.

36. In times of great public emergency, the quantities prescribed in column 5 of Schedule I may, in the case of Government consignments be exceeded and vehicles containing dangerous goods, the property of Government, may, at the special request, in writing, of the local military authorities, or of the Director-General of Ordnance in India, or of the Directors under his control, or of the Assistant Director of Stores or of the Senior Ordnance Officer (including a Superintendent of Factories), be attached to mixed or passenger trains, it being left to the Railway authorities to arrange for the safest method of despatch. All such certificates shall be submitted subsequently to the Agent or Manager of the railway Official concerned, for information.

37. The application of these rules to goods tendered or delivered for carriage by order or on behalf of Government or to any goods which any officer, soldier, sailor or police-officer or person enrolled as a volunteer under the Indian Volunteers Act, 1869, may take with him on a railway in the course of his employment or duty, as such, shall be subject to the limitation, imposed by section 59, sub-section (5) of Indian Railways Act, 1890.

38. No person shall smoke or take or leave any naked light, unprotected lamp or inflammable article near any vehicles containing dangerous goods, or near any place where such goods are stored or are being loaded, unloaded or handled. Any person committing a breach of this rule shall be punishable with fine which may extend to Rs. 50.

39. Any person despatching dangerous goods—

(1) in contravention of any of the above rules, or

(2) otherwise than in accordance with the rules set forth in Schedule I shall be punishable with fine which extend to Rs. 50.

32. Unless it be otherwise notified by the Railway Administration, the freight on all consignments of dangerous goods shall be prepaid.

33. It shall be the duty of every officer in charge of a station to cause every package of dangerous goods, which it is proposed to despatch by rail or which has been received at any station for transshipment or delivery to the consignee, to be stored at a safe distance from the station buildings, either in a covered vehicle or completely covered with tarpaulin or such other suitable material, so that it may not be exposed to the sun, and if necessary, to be protected by a police guard.

34. Every railway servant despatching any consignment of dangerous goods by rail shall certify on the invoice that the consignor has complied with rule 27, and, where the consignment consists of Compressed Gases, that the certificate required by rule 28 has been furnished by the consignor.


35. A "Dangerous" label, *i.e.* a white label with a red cross on it, shall be affixed to both sides of every vehicle in which dangerous goods are stored for delivery or transit and such vehicle shall always be kept locked and sealed.

36. In times of great public emergency, the quantities prescribed in column 5 of Schedule I may, in the case of Government consignments be exceeded and vehicles containing dangerous goods, the property of Government, may, at the special request, in writing, of the local military authorities, or of the Director-General of Ordnance in India, or of the Directors under his control, or of the Assistant Director of Stores or of the Senior Ordnance Officer (including a Superintendent of Factories), be attached to mixed or passenger trains, it being left to the Railway authorities to arrange for the safest method of despatch. All such certificates shall be submitted subsequently to the Agent or Manager of the railway Official concerned, for information.

37. The application of these rules to goods tendered or delivered for carriage by order or on behalf of Government or to any goods which any officer, soldier, sailor or police-officer or person enrolled as a volunteer under the Indian Volunteers Act, 1869, may take with him on a railway in the course of his employment or duty, as such, shall be subject to the limitation, imposed by section 59, sub-section (5) of Indian Railways Act, 1890.

38. No person shall smoke or take or leave any naked light, unprotected lamp or inflammable article near any vehicles containing dangerous goods, or near any place where such goods are stored or are being loaded, unloaded or handled. Any person committing a breach of this rule shall be punishable with fine which may extend to Rs. 50.

39. Any person despatching dangerous goods—

- (1) in contravention of any of the above rules, or
 - (2) otherwise than in accordance with the rules set forth in Schedule I
- shall be punishable with fine which extend to Rs. 50.
- 

CHAPTER IV.

OFFENCES BY PASSENGERS AND OTHER PERSONS AND PENALTIES.

40. Duties of Station Master in case of drunkenness or nuisance.—

The Station Master must use all reasonable means to stop any annoyance that may be caused by any act referred to in section 120* of the Indian Railways Act, IX of 1890; and if any person is removed from the railway under that section, shall, if necessary, direct steps to be taken for his prosecution thereunder.

41. Smoking or having open light or fire on railway premises, or keeping open light or lighted lamp in carriage.—A person who—

- (a) is found smoking, or having an open light or fire, in a goods shed or a store yard, or
- (b) persists in keeping an open light or a lighted mineral oil lamp in a carriage after being warned by a railway servant or a police officer to desist, or
- (c) persists in smoking on any other portion of the railway premises after being warned by a railway servant or a police officer to desist,

shall, if the act is deemed by the authorised officer to be dangerous, immediately be removed from the railway premises.

42. Exclusion of persons from railway premises.—A Railway Administration may exclude and if necessary remove from the station platform, or any part of the railway premises, any person not being a *bona fide* passenger, nor having business connected with the railway, and also any person who having arrived at a station by train and having no business connected with the railway refuses to leave the railway premises when required to do so. (No. 494 T-21 dated 28-9-21).

42-A. Any person, not duly authorised, riding on the engine or tender, or in, under, or upon, any vehicle or portion of a vehicle not intended for the carriage of passengers, is liable to a penalty of fifty rupees and to removal from the Railway.

43. Investigation of Station Master in case of offence by passenger.—If any passenger commits any offence, not being an offence referred to in Rule 40 or Rule 41, the Station Master must immediately investigate the case, and must exercise his discretion as to the proceeding to be taken, after referring (by telegraph, if necessary) to his immediate superior for instructions.

44. Guards to prevent breaches of rules.—Guards must exert themselves to prevent any breach of these rules by passengers or other persons.

45. Arrests.—The power of arrest conferred by sections 131 and 132 of the Indian Railways Act, IX of 1890, must be exercised with the greatest caution.

Drunkenness or nuisance
on a railway.

* 120 If a person in a railway carriage or upon any
part of a railway—

- (a) is in a state of intoxication, or
- (b) commits any nuisance or act of indecency or uses obscene or abusive language, or
- (c) wilfully and without lawful excuse interferes with the comfort of any passenger or extinguishes any lamp, he shall be punished with fine which may extend to fifty rupees in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, may be removed from the railway by any railway servant.

APPENDIX A.

[SEE PART II, CHAPTER III, RULES 15 TO 39.]

The Packing and Despatch of Dangerous Goods (other than Explosives) to which the Rules for the time being in force under the Indian Explosives Act, 1884, apply.

SCHEDULE I

Description of goods.	The Indian Ordnance and Medical Departments and the Stores Department of the India Office are exempt from the rules in this column, provided that a written declaration of the contents of the package is given by a duly authorized officer and that it is certified on the consignment note that the goods have been packed in accordance with the departmental regulations relating to the packing of such goods.	Supplementary packing, transport, loading and unloading regulations.	Conditions under which and amount which may be carried.	
			By goods train. [Normally, no restrictions as to quantity, and iron covered vehicles shall be used.]	By mixed or passenger train. [Normally dangerous goods may only be sent in wagons by mixed train where no goods trains are running.]
1.—Inflammable Liquids. CLASS A. <i>Liquids the vapours of which have flash-</i>	General packing regulations.	3	4	5

ing points below 76° Fahr. (subject to the proviso in section 2 (b) of the Indian Petroleum Act of 1899).

Bisulphide of Carbon...

Colloidon

Ether

Petroleum Ether (Gasoline).

Ethyl Chloride

(a) Packed in stoneware jars or glass stoppered bottles standing upright in wooden cases filled with chaff or saw-dust mixed with coal-dust, wood ashes, chalk or sand. A ten percent vapour space to be left in each jar or bottle.

Amount limited to one jar or bottle per case.

Packed in strong metal drums and provided with screw stoppers and caps soldered on. A 10 per cent. vapour space to be left in each drum.

Amount limited to 4 gallons in each drum.

The words "highly inflammable" must be distinctly marked on each package by the sender.

Not carried by passenger train.

1	2	3	4	5
Rectified Spirit	(a) Packed in stoneware jars or glass-stoppered bottles standing upright in wooden cases filled with chaff or saw-dust mixed with coal dust, wood ashes, chalk or sand.	None of these articles shall be accepted unless sender produces a licence; provided that a licence shall not be required for quantities not exceeding three gallons	Must be despatched in through vehicles to destination or to junction at break of gauge.	
Spirit of wine				
Absolute Alcohol	A 10 per cent. vapour space to be left in each jar or bottle. Amount limited to one jar or bottle per case.	In the case of all "Kerosine Oil" and all "Petroleum and other hydrocarbon oils" senders to declare on the consignment note whether the flashing point is below or at or above, 76° Fahr., and the railway staff to enter the same on the railway receipt and invoice.		
Methylated Spirit				
Industrial Alcohol				
Mhowa Spirit				
Alcohol Denatured	(b) Packed in strong metal drums provided with screw stoppers.			
Butyl Alcohol				
Petrol	A 10 per cent vapour space to be left in each drum. Amount limited to 150 gallons in each drum.			
Motor Car Spirit				
Motor Spirit	(c) The drums or receptacles containing the goods must be made of gas-tight tinclad or galvanized sheet iron, steel or lead plate, and fitted with well made filling holes and well fitting screw plugs, or with screw cap, or other cap with metal air-tight understrong wooden cases, the thickness of the wood to be not less than three-eighths of an inch: provided that wood cases shall			
Powerine				
Gasoline (petrol)				
Benzole				
Benzol				
Benzine				
Benzene				

These liquids may be carried by Brakeman or Mixed or passenger train in drums or receptacles of not more than four gallons capacity up to a limit of twelve gallons in one train.

Other commodities, which are not explosives and not dangerous goods, may be loaded in the same vehicle with these liquids, provided that they are well separated from them.

The drums or receptacles must be carried in the rear brack-van which should be well ventilated.

They must be placed as far as possible from other packages in the brack-van and from the rear tail light of the train.

the vapour of these goods is heavier than air and is inflammable. The vapour is also explosive when mixed with certain proportions of air in a confined space. Wagons containing these inflammable liquids should not be placed next to the engine, or rear Brake-van but should be separated therefrom by at least three wagons not loaded with explosives or other traffic of an inflammable nature. The words "highly inflammable" must be distinctly marked on each package by the sender.

Drums or receptacles in a damaged condition must not be accepted. Empty drums or receptacles should only be accepted

not be necessary where the drums or receptacles are made of tinned or galvanized sheet iron or steel and have the following thickness of metal:—

- Not less than
B.W.G.
- (1) When the capacity does not exceed 2 gallons ... 27
 - (2) When the capacity exceeds 2, but does not exceed 4 gallons. ... 22
 - (3) When the capacity exceeds 4, but does not exceed 8 gallons. ... 20
 - (4) When the capacity exceeds 8, but does not exceed 20 gallons. ... 16
 - (5) When the capacity exceeds 20, but does not exceed 30 gallons. ... 14
 - (6) When the capacity exceeds 30, but does not exceed 40 gallons. ... 12
 - (7) When the capacity exceeds 40, but does not exceed 65 gallons. ... 10
 - (8) When the capacity exceeds 65 gallons. ... B.W.G.

Benzoline ...
Acetone ...
Naphtha Mineral ...
Spirit Varnish ...
Kerosine or Paraffin Oil, dangerous, &c., having a flashing point below 76 Fahr, subject to the proviso in section 2 (b) of the Indian Petroleum Act, 1899.

1	2	3	4	5
	<p>(ii) The drums or receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit. A certificate must be entered on the consignment note by consignor to the effect that an air space of at least one-tenth of its capacity was left in each drum or receptacle at time of filling.</p> <p>(c) (1) In Tank wagons of a design approved by the Railway Board and which must be in good condition and free from leakage when used for conveyance.</p> <p>(2) Tank wagons must have a label attached, printed in conspicuous characters bearing the words "highly inflammable", and stating the precise nature and name of the contents, and the names and addresses of sender and consignee. Tank wagons must in no case be loaded beyond their weight carrying capacity.</p>	<p>if they are securely closed with bungs, plugs or caps and in the railway receipt granted to consignors the fact that the empties are all so closed should be stated.</p>		

(3) Filling and emptying of Tank wagons must be performed in day light.

(4) Tank wagons must not be filled or emptied within 20 yards of a flame or furnace, nor at any place where the wagon is exposed to sparks.

(5) In filling any Tank wagon an air space must be left, of not less than 10 per cent. of the total capacity of the Tank.

(6) The lid and all inlets and outlets of the Tank (whether loaded or empty) must be properly secured and closed airtight.

Must be packed in approved drums or receptacles of the pattern referred to above, or in thoroughly strong and sound casks, not exceeding 50 gallons in capacity containing not less than 5 per cent of air space when filled, and securely closed so as to prevent leakage, or

in hermetically sealed tins or bottles, packed in sawdust in cases or

Cements, Compositions, Paints, Polishes, and other articles partly composed of Naphtha or other highly inflammable liquids.

The conditions specified above as regards the production of a license by the sender and the declaration of the flashing point on the consignment note and its entry on the railway receipt and invoice apply to these articles also.

1	2	3	4	5
<p>I.—Inflammable Liquids.—<i>contd.</i> CLASS A.—<i>contd.</i></p>	<p>in securely closed tins, packed in sawdust in cases, containing not more than $\frac{1}{2}$ gallon of liquid per package,</p> <p>Must be packed in iron drums, or iron cans, strongly made and securely closed so as to prevent leakage, or</p> <p>in hermetically sealed tins or air-tight collapsible tubes packed in sawdust in cases, or in air-tight tins packed in sawdust in a wooden box as an inner package, or air tight collapsible tubes packed in sawdust in stout cardboard boxes or cartons as an inner package, each such inner package to contain not more than 1 lb. of Rubber Solution, and to be packed in an outer package made of wood, with sides not less than $\frac{5}{8}$ inch thick, and ends $\frac{3}{4}$ inch thick, strongly bound with hoop iron or crescent wire, and containing a total of not more than 10 lbs. of Rubber Solution, or</p>	<p>The words "highly inflammable" must be distinctly marked on each package by the sender.</p>		
<p>Rubber Solution composed of Rubber and Naphtha.</p>				

in air-tight collapsible tubes, each containing not more than 1 fluid ounce of Rubber Solution, packed in sawdust in stout cardboard boxes or cartons as an inner package, each such inner package to contain not more than 1 lb of Rubber Solution and to be packed in an outer package made of wood with sides not less than $\frac{5}{8}$ inch thick, & ends $\frac{3}{4}$ inch thick, strongly bound with hoop iron or crescent wire & containing a total of not more than 30 lbs. of Rubber Solution.

Wood Naphtha or
Wood Spirit.

Must be packed in stoneware jars or glass-stoppered bottles or in vessels of tin or copper provided with screw stoppers or corked with caps, covering their mouths, soldered on.

The words "highly inflammable" must be distinctly marked on each package by the sender.

Other commodities which are not explosives and not dangerous goods may be loaded in the same vehicle with spirit, methylated, provided that they are well separated from it

CLASS II.

Liquid the vapours of which have flashing

1	2	3	4	5
<p>points at 76° Fahr., & higher temperatures (subject to the proviso in section 2 (b) of the Indian Petroleum Act of 1899).</p> <p><i>Note</i>—Lubricating oils having a flashing point at or above 200° Fahr., shall not be deemed to be dangerous goods for the purposes of this rule.</p>				<p>For such time as, owing to the war, the present difficulty of obtaining materials from England lasts, "kerosine oil, non-dangerous" may be carried in any quantity by mixed trains even when goods trains are running.</p>
<p>Cements, Compositions, Paints, Pollashes, and other articles partly composed of Naphtha or other inflammable liquids.</p>	<p>Must be packed in casks, iron drums or iron cans strongly made and securely closed so as to prevent leakage or in hermetically sealed tins or bottles packed in sawdust in cases, or in securely closed tins packed in sawdust in cases containing not more than $\frac{1}{2}$ gallon of liquid per package.</p>	<p>The word "inflammable" must be distinctly marked on each package by the sender.</p>	<p>"Other commodities which are not explosives & not dangerous goods, may be loaded in the same vehicle with these liquids, provided that they are well separated from them".</p>	<p>For such time as, owing to the war, the present difficulty of obtaining materials from England lasts, one tank wagon containing "kerosine oil, non-dangerous" in tins may be attached to the rear brakevan of passenger trains. Except the tail lamp no other lights must be allowed near the wagon and this rule must be strictly observed.</p>
<p>Kerosine or Paraffin oil, non-dangerous i. e., having a flashing point at or above 76° Fahr., subject to the proviso in section 2 (b) of the Indian Petroleum Act, 1899.</p>	<p>When not loaded in tank wagons specially constructed for the carriage of dangerous goods, must be securely packed to prevent leakage, in iron or steel drums, or in strong tins or in bottles corked & sealed, and such tins or bottles should be enclosed in wooden cases.</p>	<p>In the case of all "Kerosine oils" and all "Petroleum & other hydro-carbon oils", senders to declare on the consignment note whether the flashing point is below, or at</p>		

Gas oil.

Liquid Fuel.

Petroleum and other hydrocarbon oils, non-dangerous, *i.e.*, having a flashing point at or above 76° Fahr. subject to the provision in section 2 (b) of the Indian Petroleum Act, 1899.

Turpene,

Rosin oils.

Batehing oil,

When bottles are used they must be packed in straw or saw-dust.

Liquid fuel, provided it has a flesh point at or above 150° Fahr. may also be carried in wooden casks.

or above 76° Fahr., and the railway staff to enter the same on the railway receipt and invoice, Kerosine or Paraffin oil non-dangerous, & 'Petroleum and other hydrocarbon oils, non-dangerous', in quantities exceeding 500 gallons must not be accepted unless sender produces a special or general licence.

The word 'inflammable' must be distinctly marked on each package by the sender.

If without outer wooden cases, a layer of durma matting or other suitable dunnage must be placed on the floor of the wagon and between each tier of tins, and where the goods are transhipped

1	2	3	4	5
I.—Inflammable Liquids—<i>contd.</i> CLASS B.—<i>contd.</i>		<p>from one wagon to another, the matting or other dunnage originally used at the place of loading, must also be transhipped & properly laid down.</p>		
Oil of Turpentine ... Spirits of Turpentine... Terebinte or Sun Dryers'. Turpentine Substitutes. Varnish.	<p>Must be packed either in iron or steel drums or tins properly soldered or in corked or capsuled bottles, the bottles or tins being securely packed in wooden cases.</p>	<p>The word 'inflammable' must be distinctly marked on each package by the sender.</p>	<p>"Other commodities which are not explosives and not dangerous goods, may be loaded in the same vehicle with these liquids, provided that they are well separated from them."</p>	
Rubber solution composed of Rubber and Naptha.	<p>Must be packed in casks, iron drums, or iron cans, strongly made and securely closed so as to prevent leakage, or in hermetically sealed tins or air-tight collapsible tubes packed in saw-dust in cases, or in air-tight tins packed in saw-dust, in a wooden box an inner package, or air-tight collapsible tubes; packed in sawdust, in stout cardboard boxes or cartons</p>	<p>Senders to declare on the consignment note whether the flashing point is below, or at or above 76° Fahr., and the railway staff to enter the same on the railway receipt and invoice.</p>		

The word "inflammable" must be distinctly marked on each package by the sender.

as an inner package, each inner package to contain not more than 1 lb. of Rubber Solution, and to be packed in an outer package made of wood, with sides not less than $\frac{3}{8}$ inch thick, and ends $\frac{3}{4}$ inch thick, strongly bound with hoop iron or crescent wire, and containing a total of not more than 10 lbs. of Rubber Solution, or

in air-tight collapsible tubes, each containing not more than 1 fluid ounce of Rubber Solution, packed in saw-dust, in stout cardboard boxes or cartons as an inner package, each such inner package to contain not more than 1 lb. of Rubber Solution, and to be packed in an outer package made of wood with sides not less than $\frac{3}{8}$ inch thick, and ends $\frac{3}{4}$ inch thick, strongly bound with hoop iron or crescent wire, and containing a total of not more than 30 lbs of Rubber Solution.

Rubber Solution composed of Rubber and Naphtha.

1	2	3	4	5
<p>II.—Dangerous, Corrosive & Poison- ous Chemicals.</p>	<p>Must be put into leaden or gutta- percha bottles, standing upright in cases; the inside packing of the cases must be of straw, chaff or saw-dust mixed with coal, wood-ashes, chalk, sand, or dry earth.</p>			
<p>Acid, Fluoric or Hy- drofluoric,</p>	<p>Must be packed in casks or in carboys. The carboys should be securely bunged or stoppered and luted."</p>			
<p>Acid, Formic ...</p>	<p>Must be well secured in stoneware jars, or glass-stoppered bottles, standing upright in cases; the inside packing of these cases must be of ashes, free from cinders or of chalk, sand or dry earth.</p>	<p>The gross weight of each package must not exceed 2 maunds.</p>	<p>.....</p>	<p>By brake-van of mixed or pas- senger train, one case only. It must be placed as far as possi- ble from other packages in the brake-van.</p>
<p>Acid, Hydrochloric or Muriatic or Spirit of Salts.</p>	<p>The inside packing of the cases containing Acid. Hydrochloric or Muriatic or Spirit of Salts may be of straw, or refuse cheap enough for packing such as grass, wood shavings, etc., and this acid may also be carried in glass or earthenware carboys of not more</p>			

than 12 gallon capacity, packed securely in iron crates with straw, or refuse cheap enough for packing, such as grass, wood shavings, etc. The carboys should be securely bunged or stoppered and luted, with their necks exposed. *Note*-Acid, Hydrochloric or Mur-
 atic or Spirit of Salts in glass carboys of not more than 12 gallon capacity may however be packed in wooden crates or wicker work hampers as a temporary measure during the period of the war.

Must be well secured in stoneware jars, or glass-stoppered bottles, standing upright in cases; the inside packing of these cases must be of ashes, free from cinders, or of chalk, sand or dry earth.

In casks or iron drums or carboys.

Must be well secured in stoneware jars, or glass-stoppered bottles, standing upright in cases; the inside packing of these cases must be of straw, chaff, or sawdust, mixed with coal, wood-ashes, chalk or sand.

Acid, Nitric or Aqua-
 fortis.

Muriate or Chloride of
 Zinc.

Acid, Acetic
 Acid, Carbolic
 Acid, Cresylic
 Amorphous Phosphorus
 Bromine
 Chloride of Sulphur
 Chloride of Iron
 Chlorus

.....

.....

.....

In the case of Government consignments more than one case may be so carried that the gross weight of the

The gross weight of each package must not exceed 2 maunds.

Bottles containing "Bromine" "Hydrochloric Acid,"

1	2	3	4	5
II.—Dangerous, Corrosive & poison- ous Chemicals.				
Ammonia in Solution...	Must be put into metal bottles with caps soldered on standing upright in cases. The inside packing must be of straw, chaff, or sawdust mixed with coal, wood-ashes, chalk or sand.	"Nitric Acid," or "Ammonia in Solution" must be only three-fourths full to allow for expansion of vapour.		cases does not exceed two maunds.
Acid, Phosphoric ...	In casks.	.....	.....
Acid, Sulphurous (solution).	(i) Must be well secured in stone-ware jars or glass-stoppered bottles, standing upright in cases and the inside packing of these cases must be of ashes, free from cinders, or of chalk, sand, or dry earth. In the case of Sulphuric Acid, diluted with not less than twice its volume of water, of a specific gravity of 1.250 or below which must be certified in writing by the consignor the inside packing of the cases containing such acid may be straw or refuse cheap enough for packing, such as grass-wood-shavings, etc., instead of ashes free from cinders, or chalk, sand, or dry earth.	The weight of each case, when packed in accordance with clause (i) or (ii) of column (2), must not exceed 2½ maunds; but when packed in accordance with clause (iii) the net weight of the Acid must not exceed 112 lbs. When packed in accordance with clause (iv) the weight of each package must not exceed 5 maunds	.....

(ii) "May also be carried in glass or earthenware carboys of not more than 12 gallon capacity, packed securely in iron crates with straw, or refuse cheap enough for packing, such as grass, wood shavings, etc. May also be carried in earthenware jars or carboys of less than 12 gallon capacity, firmly packed in straw in wooden racks fixed in the wagons. The carboys should be securely bunged or stoppered and luted, with their necks exposed." Glass carboys of not more than 12 gallon capacity may however be packed in wooden crates or wicker work hampers as a temporary measure during the period of the war.

(iii) May also be packed in hermetically sealed cistern made of lead weighing 5 lbs. per square foot, enclosed in wooden cases made of one inch thick boards bound with half-inch hoop iron, the side of the case being so constructed that the grain runs horizontally on two sides and vertically on the other two.

(iv) Must not be put in jars with cork or wooden stoppers.

Acid, Sulphuric, or Oil
of Vitriol or Nitric.

II.—Dangerous Corrosive & Poisonous Chemicals— <i>contd.</i>	2	3	4	5
<p>(v) Acid, Sulphuric, Concentrated, <i>i.e.</i>, of a specific gravity not less than 1.84, which must be certified in writing by the consignor, may be packed in strong hermetically sealed iron or steel drums which must be in good condition and free from rust.</p> <p>(vi) May also be carried in tank wagons of an approved design and of a carrying capacity not exceeding 20 tons.</p>	<p>Must be packed in cases, casks, or iron drums, and must not be carried in bags.</p>	<p>The word "Poison" must be distinctly marked on each package by the sender.</p>	<p>The cases, casks or iron drums must not be loaded with other goods liable to be damaged thereby (such as food stuffs, textile fabrics, leather and rubber goods) or with inflammable liquids.</p>	<p>May be despatched by brake-van of mixed or passenger train in any quantity at any time, if desired.</p>
<p>Arsonic</p>	<p>Must be packed in cases or in glass bottles (not carboys) packed in cases or hampers.</p>	<p>.....</p>	<p>.....</p>	<p>The cases, casks or iron drums must be placed</p>
<p>Bisulphite of Lime Solution, saturated with Sulphur Dioxide Gas.</p>	<p>Must be packed in cases or in glass bottles (not carboys) packed in cases or hampers.</p>	<p>.....</p>	<p>.....</p>	<p>The cases, casks or iron drums must be placed</p>

as far as possible from other packages in the brake-van.	By brake-van of mixed or passenger train, one case only. It must be placed as far as possible from other packages in the brake-van.	.....	.....	.....	.....
Chloroform. ...	Must be packed in strong or airtight iron drums or in bottles packed in saw-dust in cases.	The gross weight of each package must not exceed 1 maund.	Chlorates must not be loaded in the same vehicle with combustible materials, with sugar or sulphur, or with sulphuric acid (oil of Vitriol), Hydrochloric Acid (Muriatic Acid) or Nitric Acid.	.....	.....
Chlorate of Barium ...	Must be packed in iron drums or paper lined casks of sufficient strength not to allow any of their contents to escape through wear and tear of transport.				
Chlorate of Potash ...	Chlorate of Potash may also be carried in jars or bottles packed in cases.				
Chlorate of Soda ...					
Nitrate of Barium. ...	Must be packed in cases, casks or iron drums, and must not be carried in bags.				
Nitrate of Lead. ...					
Nitrate of Iron... ..					
Nitrate of Potash, Nitre, or Saltpetre [other than manures].	Must be packed in bags or casks.				

1	2	3	4	5
II—Dangerous Corrosive & Poisonous Chemicals—contd.				
Nitrate of Soda (other than manures)	Must be packed in bags or casks or in tins packed in cases.			
Muriate of Tin or Tin Liquor	Must be packed in casks or iron drums.	.....	.....	.....
Potassium	Must be packed in iron drums hermetically sealed. Any quantity under four pounds, for chemical purposes, may also be packed in mineral oil in stoppered bottles contained in tin cases.	.....	.....	.....
Sodium	Must be packed in iron drums enclosed in strong wooden cases, or in approved air-tight and water-tight iron drums, packed in strong wooden cases; also in approved steel cases, each containing not more than 3 cwt. of sodium, closed with air-tight locked lever-lids. Any quantity under four pounds, for chemical purposes, may also be packed in mineral oil in stoppered bottles contained in tin cases.	.....	.....	.....
Oxalic acid	Must be packed in casks or casks.	The word "Poison" must be distinctly marked on each package by the sender.		

Must be packed in steel cylinders contained (i) in a crate in such a manner that the label is plainly visible, or (ii) in a covering made of closely plaited one inch (circumference) hemp or coir to which an additional metal label, marked as directed in column 3, is attached by wire or rivets, or (iii) in a strong wooden case with additional metal label, marked as directed in column 3, on the outside thereof.

Acetylene when contained in a homogeneous porous substance, subject to the conditions specified in the Government of India, Department of Commerce and Industry, Notification No. 596-D dated the 6th December 1919, vide Schedule VI.

Every cylinder shall have permanently and conspicuously marked upon it or upon a brass plate soldered to it the name of the manufacturer and the words "Acetylene compressed into porous substance exempted by the Notification of the Government of India in the Department of Commerce and Industry, No. 596-D., dated the 6th December 1919", and every cylinder shall bear a label giving the date when it was last charged together with the name of the firm by which it was charged, the address of the last charging station and the maximum pressure allowed in the cylinder. Every cylinder capable when empty of containing one cubic foot of water or more and

1	2	3	4	5
<p>II.—Dangerous, Corrosive & Poison- ous Chemicals.</p>	<p>Must be packed in hermetically closed metal drums or metal cases sufficiently strong to remain in that condition through ordinary wear and tear of transport, so that the Carbide of Calcium cannot be affected by air or moisture.</p> <p>There must be no copper in the composition of any drum or case containing the Carbide of Calcium.</p>	<p>manufactured after the date of this notification shall have stamped upon it the name or the trade mark of the manufacturer and the serial number of the cylinder.</p>	<p>.....</p>	<p>By brake-van of mixed or passenger train subject to a limit of 450 lbs. per train.</p> <p>The drums or cases must be placed as far as possible from other packages in the brake-van.</p>
<p>Carbide of Calcium ...</p>	<p>The label on each hermetically closed drum or case must bear in conspicuous characters the words "<i>Dangerous if not kept dry</i>" and with the following caution.</p>	<p>"If any carbide of calcium becomes wetted while in the posses-</p>		

"The contents of this drum (or case) are liable if brought into contact with moisture, to give off a highly inflammable gas."

The name and address of the sender should also be labelled on each drum or case.

sion of a Railway for transport it shall be destroyed by immersion in deep water. If, however, deep water is not available, the wet Carbide of calcium shall be spread out in the open in an isolated position, all precautions being taken to prevent lights being brought near until the material has given off all its gas."

NOTE.—*The fact of Carbide of Calcium having become wet will be indicated by the outward appearance of the drum or case and probably by a disagreeable odour showing a leakage of gas. Vehicle used for the carriage of "Carbide of Calcium" must be thoroughly ventilated and rendered impervious to rain. Cylinders must be carefully handled,*

(a) These gases must be packed in cylinders.

"Other commodities, which are

"Compressed or Liquefied Car-

1	2	3	4	5
<p>II.—Dangerous, Corrosive & Poisonous Chemicals—<i>contd.</i></p>				
<p>Compressed Atmospheric air.</p> <p>Compressed Oxygen</p> <p>Compressed of Liquefied Carbonic Acid Gas (Carbon Dioxide).</p> <p>Compressed Coal Gas.</p>	<p>(b) Cylinders must be made of wrought iron or mild steel of the best quality and must comply in every other respect with the recommendations made by the Departmental Committee on compressed gas cylinders appointed by the Secretary of State for the Home Department in England in 1895, and must not exceed 8 feet in length and 10 inches in diameter.</p> <p>Special attention is directed to the extract from the recommendations of the Departmental Committee, printed as Schedule V to these rules.*</p> <p>(c) Cylinders must be separately and securely packed in a strong wooden case or in a covering made of closely plaited 1 inch (circumference) hemp or cord, except that:—</p>	<p>and must not be placed near a fire, or exposed to other source of heat.</p>	<p>not explosives and not dangerous goods, may be loaded in the same vehicle with cylinders containing 'Compressed or Liquefied Carbonic Acid Gas,' 'Compressed Atmospheric Air,' 'Compressed Oxygen,' or 'Compressed Hydrogen' or compressed ammonia gas or Liquefied Ammonia.</p>	<p>bonic Acid Gas," "Compressed Atmospheric Air," "Compressed Oxygen," and "Compressed Hydrogen," and compressed Ammonia Gas or Liquefied Anhydrous Ammonia may be allowed, as exceptions to the other compressed gases, to be carried in the rear brake-van or mixed or passenger trains subject to a limit of two cylinders per van. The cylinders must be placed</p>

* NOTE.—This rule (c) so far as it relates to "Carbonic Acid Gas" will be held in abeyance up to 24th February 1913 to allow of light German cylinders which do not altogether comply with the tests here specified, being used under certain conditions.

as far as possible from other packages in the brake-van.

hicle and they are well separated from the other commodities."

(i) Several small cylinders not exceeding 24 inches, in length and 4 inches in diameter may be packed in one box, provided that each cylinder is contained in a separately compartment or is separately encased in closely plaited 1 inch (circumference) hemp or coir. Each box must not contain more than 25 small cylinders and gross weight of each box and contents must not exceed $3\frac{1}{2}$ manuds.

(ii) Small cylinders not exceeding 12 inches in length and 3 inches in diameter containing Nitrous Oxide may be packed in wicker-work baskets containing two such cylinders in separate compartments.

(a) Cylinders containing Compressed Atmospheric Air Coal Gas, Hydrogen or Oxygen, must not be charged to a greater pressure than 1,800 lbs. per square inch.

(c) No cylinder may contain per pound of water capacity, more than $\frac{3}{4}$ lb. of carbon dioxide (carbonic acid gas); $\frac{1}{4}$ lb. of anhydrous ammonia; $\frac{3}{8}$ lb. of

Compressed Hydrogen

Compressed Ammonia

Gas or Liquefied Anhydrous Ammonia.

69

Compressed or Liquefied Nitrous Oxide.

Compressed or Liquefied Sulphurous Acid Gas (Sulphur Dioxide),

1	2	3	4	5
III.—Miscellaneous Dangerous Articles. <i>Contd.</i>				
	<p>nitrous oxide; or $1\frac{1}{4}$ lbs. sulphur dioxide (sulphurous acid gas), respectively.</p> <p>"(S) In the case of cylinders for Anhydrous Ammonia the greatest pressure of gas must be assumed as 1,000 lbs. per square inch and at that pressure the stress in the metal must not exceed 6 tons per square inch for wrought iron or 7 tons per square inch for steel."</p>			
Matches, safety ... Matches, non-safety ...				
NOTE.—Matches which ignite by simple friction & Bengal lights which while not ordinarily igniting by simple friction, are capable of doing so under chemical decomposition and are liable to spontaneous combustion should be	<p>(P) Must be packed in strong dust-tight wooden cases which, in the case of Matches, non-safety, must have a metal lining."</p> <p>[Note.—During such time as, owing to the war, the present difficulty of obtaining materials exists, matches, non-safety, may be packed in strong dust tight wooden cases with tar paper lining instead of the metal lining required above; but as cardboard lining is safer than tar-paper lining, the former should</p>		<p>Other commodities, which are not explosives and not dangerous goods, may be loaded in the same vehicle with 'Matches, Safety,' provided that they are well separated from them."</p>	

be used whenever possible. The thickness of the wood utilised in the outer case should conform to that given in clause (2) below.]

(2) The outer wooden cases used for the carriage of matches shall be of the following thickness of wood: if gross weight of case with contents does not exceed 4 maunds in weight, $\frac{1}{2}$ inch thick throughout; if gross weight of case with contents exceeds 4 maunds, $\frac{3}{4}$ inch thick throughout.

(3) "Matches, safety." may however, be carried in the tins in which they are imported, provided that such tins are strong enough as outer packages that they do not exceed a limit in size of 2' x 1' x 1' weighing approximately $13\frac{1}{2}$ seers and do not contain more than 120 packets of "Matches, safety."

.....

In tarpulin bags, bales, hampers, parcels or cases.

In air-tight and damp-proof cases, and in bales.

considered as coming within the class "matches-non-safety," while those which require to be rubbed on the prepared surface of the box which contains them to be ignited should be considered as coming within the class "Matches safety."

Oily Bagging

"Canvas

"Covers

"Paper

1	2	3	4	5
III.—Miscellaneous Dangerous Articles. <i>concl'd.</i>				
* Rags				
" Waste ...	In thoroughly sound cases.			
Ferro-Silicon 30 per cent. and under; 65 per cent. and over.	In casks, cases, or bags...	(1) Must not be conveyed in closed trucks or box wagons. (2) The grade of Ferro-Silicon must be stated on the consignment note.	.....	.....
Ferro-Silicon between 30 per cent. and 65 per cent.	In casks, or cases, perforated with one inch holes.	(3) Ferro-Silicon between 30 per cent and 65 per cent must not be accepted in casks or cases, unless the casks or cases are perforated with not less than 4 one inch holes, and Ferro-Silicon (all grades) must not be accepted in iron drums.		
Zinc Dust or Tutty powder.	In air-tight and damp proof casks or cases.	Must not be accepted for conveyance when packed in bags.	No restriction as to quantity.	

SCHEDULE II

Consignment Note for Dangerous, Explosive, and Combustible Articles.

_____ Railway _____
 To the _____ Railway Administration
 Station, _____ Company.
 Dated _____ 19 ____
 The _____ Railway Administration
 _____ Company, are requested to receive
 for despatch to _____ Station on the _____ Railway, the
 following packages consigned to _____ of _____,
 containing the dangerous, explosive or combustible articles which are specified
 below, and I hereby declare that the contents of the packages are known to me,
 that the conditions laid down in the General Rules sanctioned by the Governor-
 General in Council for the packing and carriage of dangerous, explosive and
 combustible articles have been complied with and that the actual weight of the
 article contained in each separate package or case is entered herein. *I also*
declare that the original certificate signed by _____
the true copy of the _____
which now accompanies this consignment refers to samples of the _____
forwarded under this Consignment Note.

By whom consigned.	To whom consigned.	Station and address.	No. of article.	Description and marks.	SENDER'S WEIGHT.		Carriage to be paid by.
					Maunds.	Seers.	

NOTE.—The words printed in italics should be scored out where they are not required.

I do hereby certify that I have satisfied myself that the description, marks and weight or quantity of goods consigned by me have been correctly entered in this Consignment Note.

(Space for printing foregoing certificate in the necessary vernaculars.)

Signature of Sender or Deliverer of Goods _____

Address _____

Date _____

The attention of the sender or deliverer of the goods is invited to the principal terms and conditions applying to the carriage of goods by railway, which are set forth in the Public Notice on the back of this document.

No alteration is to be made in the above entries after this Consignment Note has been signed by the Consignor.

Particulars of Weighment.

No. of Articles.	Description.	WEIGHT.		Checked by.....Date.....
		Maunds.	Seers.	
				Weighed by..... "
				Loaded by..... "
				Invoiced by..... "
				Receipt No..... "
				Invoice No..... "
				Wagon No..... "

NOTICE TO CONSIGNORS.

(As in Appendix B).

SCHEDULE III.

RISK NOTE, FORMS D & G.

(Vide Appendix C).

SCHEDULE IV.

CERTIFICATE FOR COMPRESSED CASES.

Certified that the cylinder
cylinders containing _____ tendered by $\frac{mc}{us}$ as per Forwarding Order No. _____ of this date to the _____ Railway for despatch to _____ Station has
have been packed and tested in accordance, and that the cylinder complies
cylinders comply in every other respect, with the rules promulgated in Chapter III. Part II., of the General Rules for working open lines of railway.

Signature of Sender
Senders.

SCHEDULE V.

Summary of Recommendations of the Departmental Committee on compressed Gas Cylinders appointed by the Secretary of State for the Home Department in England in 1895.

I.—CYLINDERS OF COMPRESSED GAS (OXYGEN, HYDROGEN, OR COAL GAS).

Lap-Welded wrought iron.—Greatest working pressure, 120 atmospheres, or 1,800 lbs. per square inch.

Stress due to working pressure not to exceed $6\frac{1}{2}$ tons per square inch.

Proof pressure in hydraulic test, after annealing, 224 atmospheres, or 3360 lbs. per square inch.

Permanent stretch in hydraulic test not to exceed 10 per cent, of the elastic stretch.

One cylinder in 50 to be subjected to a statical bending test, and to stand crushing nearly flat between two rounded knife edges without cracking.

(b) *Lap-welded or seamless steel.*—Greatest working pressure, 120 atmospheres, or 1,800 lbs. per square inch.

Stress due to working pressure not to exceed $7\frac{1}{2}$ tons per square inch in lap-welded, or 8 tons per square inch in seamless cylinders.

Carbon in steel not to exceed 0.25 per cent, or iron to be less than 99 per cent.

Tenacity of steel not to be less than 26 or more than 33 tons per square inch.

Ultimate elongation not less than 1.2 inches in 8 inches Test bar to be cut from finished annealed cylinder.

Proof pressure in hydraulic test, after annealing, 224 atmospheres, or 3,360 lbs. per square inch.

Permanent stretch shown by water jacket not to exceed 10 per cent of elastic stretch.

One cylinder in 50 to be subjected to a statical bending test and to stand crushing nearly flat between rounded knife edges without cracking.

Regulations applicable to all cylinders.

Cylinders to be marked with a rotation number, a manufacturer's or owner's mark, an annealing mark with date, a test mark with date. The marks to be permanent and easily visible.

Testing to be repeated at least every two years, and annealing at least every four years.

A Record to be kept of all tests.

Cylinders which fail in testing to be destroyed or rendered useless.

Hydrogen and coal gas cylinders to have left-handed threads for attaching connections, and to be painted red.

The compressing apparatus to have two pressure gauges and an automatic arrangement for preventing over-charging. The compressing apparatus for oxygen to be wholly distinct and unconnected with the compressing apparatus for hydrogen and coal gas.

Cylinders not to be refilled till they have been emptied.

If cylinders are sent out unpacked, the valve fittings should be protected by a steel cap.

A minimum weight to be fixed for each size of cylinder in accordance with its required thickness. Cylinders of less weight to be rejected.

11.—CYLINDERS FOR CARBONIC ACID.

Greatest working pressure to be reckoned as 120 atmospheres.

Cylinders to be of lap-welded wrought iron, lap-welded steel or seamless. Stresses, tests, and conditions as to repetition of tests to be the same as for oxygen cylinders.

The marking to be the same with the empty, and the greatest permissible weight

No cylinder to contain more than $3\frac{1}{4}$ lb. of carbonic acid per pound of water capacity, if for this country (*i. e., England*). or $\frac{3}{2}$ lb. per pound of water capacity, if for the tropics.

If cylinders are sent out unpacked, the valve fittings should be protected by a steel cap.

A notice should be affixed to the cylinder that it contains carbonic acid, and that it should be kept cool and not exposed to the sun or the heat of a stove.

III.—CYLINDERS FOR AMMONIA.

Greatest working pressure to be reckoned as 1,000 lbs. per square inch.

Hydraulic test pressure 1,500 lbs. per square inch.

Greatest working stress 7 tons per square inch for steel, and 6 tons per square inch for wrought iron.

In other respects the material, test and rule for repetition of tests to be the same as for oxygen cylinders.

The marking to be similar to that for oxygen cylinders, but the weight of cylinder empty and the greatest permissible weight of ammonia it may contain to be added.

Ammonia cylinders should not contain more than 0.5 lb. per pound of water capacity.

If cylinders are sent out unpacked, the valve fittings should be protected by a steel cap.

A notice should be affixed to the cylinder that it contains ammonia, and that it should be kept cool and not exposed to the sun or the heat of the stove.

IV.—CYLINDER FITTINGS,

No oil or similar lubricant to be used for cylinder valves, pressure gauges, regulators, or other fittings

Pressure gauges to have a check to prevent a sudden inrush of gas.

Pressure gauges for hydrogen and coal gas to have left-handed screws, and to be painted red.



SCHEDULE VI.

Acetylene.

No. 596-D.

GOVERNMENT OF INDIA.

DEPARTMENT OF COMMERCE AND INDUSTRY.

NOTIFICATION.

Explosives

Delhi, the 6th December 1919.

In exercise of the powers conferred by sections 17 and 6 of the Indian Explosives Act, 1884 (IV of 1884), and in supersession of the Notification of the Government of India in the Department of Commerce and Industry, No. 706-39, dated the 30th January 1915:—

1. The Governor General in Council is pleased hereby to declare that acetylene, when liquid or when subject to a pressure above that of the atmosphere capable of supporting a column of water exceeding two hundred and fifty inches in height, and whether or not in admixture with other substances, or when in admixture with atmospheric air or with oxygen gas in whatever proportion and at whatever pressure, and whether or not in admixture with other substances, shall be deemed to be an explosive within the meaning of the said Act, subject to the following exception that if it be shown to the satisfaction of the Governor General in Council that acetylene declared to be an explosive by this notification when in admixture with any substance, or in any form or condition, is not possessed of explosive properties, the Governor General in Council may, by order, exempt such acetylene from being deemed to be an explosive within the meaning of the said Act.

Provided that nothing in this notification shall apply to acetylene in admixture with air when such admixture takes place only in a burner or contrivance in which the mixture is intended to be burnt:

provided also, that nothing in this notification shall be held to apply to an admixture of acetylene and air which may unavoidably occur in the first use or re-charging of an apparatus properly designed and constructed with a view to the production of pure acetylene:—

Provided also, that acetylene, when in admixture with oil-gas (that is to say, a gas manufactured from mineral oil), shall not when under compression be deemed to be an explosive within the meaning of the said Act, if the following conditions are fulfilled namely:—

- (1) The acetylene shall be generated only by the Atkins Dry Process.
- (2) The proportion of acetylene shall not exceed fifty parts by volume in every one hundred parts of the mixture of acetylene and oil-gas.
- (3) The acetylene and oil-gas shall be mixed together in a chamber or vessel before the gases are subjected to compression.

(4) The mixture shall not be compressed to a pressure exceeding one hundred and fifty pounds to one square inch:

Provided also, that acetylene when contained in homogeneous porous substance with or without acetone or other solvent, shall not be deemed to be an explosive within the meaning of the said Act, if the following conditions are fulfilled, namely,

- (1) The porous substance shall fill as completely as possible the cylinder into which the acetylene is compressed.
- (2) The porosity of the substance shall not exceed eighty per cent.
- (3) Any acetone or other solvent used shall not be capable of chemical reaction with the acetylene gas or with the porous substance or with the metal of the cylinder, and the quantity of acetone or other solvent shall be such that when fully charged with acetylene it shall not completely fill the porosity of the porous substance at any temperature likely to be met with in ordinary practice or use.
- (4) A drawing showing the method of construction of every type of cylinder it is proposed to use for the storage of compressed acetylene gas shall be deposited with the Chief Inspector of Explosives with the Government of India and no cylinder shall be so used unless it is of a design approved in writing by the said Chief Inspector:

Provided that this shall not be deemed to prohibit the use of existing cylinders for a period of five years from the date of this notification.

- (5) The pressure in the cylinders shall not exceed two hundred and twenty-five pounds to the square inch at a temperature of sixty degrees Fahrenheit:

Provided that no cylinder capable when empty of containing one cubic foot of water or more, which has the ends secured to the body by welding only, and no cylinder in which a porous substance is used without acetone or other solvent shall be charged to a pressure exceeding one hundred and fifty pounds to the square inch at a temperature of sixty degrees Fahrenheit. This condition shall not apply to cylinders used exclusively for marine lighting by an officer appointed by a local Government in that behalf.

- (6) Every cylinder capable when empty of containing one cubic foot of water or more in which under this notification the pressure allowed may be two hundred and twenty-five pounds to the square inch, shall be annealed and every cylinder shall be tested by hydraulic pressure to a pressure of not less than four times the pressure to which the cylinder is to be subjected in use, such hydraulic pressure to be maintained for a period of not less than fifteen minutes and no cylinder shall be used which on the first occasion of its being subjected to this test shall show any permanent stretch.
- (7) The compression of the acetylene shall be carried out only on such premises as shall have been approved in writing by the Chief Inspector of Explosives with the Government of India. Such approval may be withdrawn at any time by that officer.
- (8) No firm shall charge with acetylene any cylinder manufactured by any other firm unless it is in full possession of full particulars and previous history of such cylinder or has otherwise assured itself that the cylinder complies with the requirements of this notification.
- (9) Whenever a cylinder is charged with acetylene it shall be subjected to a thorough visual examination if the history of the cylinder shows that it has not been subjected to such an examination within the previous twelve months and at the same time the valve shall be removed and the condition of the porous substance at the neck of the cylinder ascertained.
- (10) Every cylinder shall have permanently and conspicuously marked upon it or upon a brass plate soldered to it the name of the manufacturer and the words "Acetylene compressed into porous substance exempted by the notification of the Government of India in the Department of Commerce and Industry. No. 596-D., dated the 6th December 1919" and every cylinder shall bear a label giving the date when it was last charged together with the name of the firm by which it was charged, the address of the last charging station, and the maximum pressure allowed in the cylinder. Every cylinder capable when empty of containing one cubic foot of water or more and manufactured after the date of this notification shall have stamped upon it the name or the trade mark of the manufacturer and the serial number of the cylinder.
- (11) Each charging firm shall keep a record of every cylinder charged by it. This record shall give the following information, namely:—
 - (a) the date of each charging of the cylinder;
 - (b) the dates upon which solvent has been added;

- (c) the dates upon which the cylinder has been thoroughly examined as provided in condition (9), the result of each such examination, and the name of the person carrying out such examination; and

in the case of cylinders first issued by the firm, the tare weight of the cylinder including porous substance and acetone or other solvent, the nature of the solvent, and the maximum pressure allowed in the cylinder;

The record shall be open to the inspection of the Chief Inspector of Explosives and Inspectors of Explosives with the Government of India.

- (12) Every facility shall be given to the Chief Inspector of Explosives and Inspectors of Explosives with the Government of India to inspect the apparatus and methods by which the cylinders are charged.

II. The Governor General in Council is pleased to prohibit absolutely the manufacture, possession and importation of such acetylene as is declared by paragraph I of this notification to be an explosive.

APPENDIX B.
INDIAN RAILWAY CONFERENCE ASSOCIATION.

RED PAMPHLET No. 5.

(Corrected upto date)

RULES AND RATES FOR THE CONVEYANCE
OF
EXPLOSIVES
AND OTHER
DANGEROUS GOODS
BY
RAIL.

In force from 1st January 1923.

To be used in through booking between all railways, parties to the
Indian Railway Conference Association.

The Rules in this pamphlet are to be worked to as executive instructions, but for the purpose of legal proceedings action must be based on the Statutory Rules known as "The Indian Explosives Rules, 1914" published in the Notification of the Government of India in the Department of Commerce and Industry No. 4013-33 dated Simla, the 6th June 1914, so far as explosives are concerned.

As regards other dangerous goods, action must be based, for the purpose of legal proceedings, on Railway Board's Resolution No. 1025-R. T., dated the 10th June 1912 published in Notification No. 71 dated the 13th June 1912.

ALLAHABAD,
18th December, 1922. }

E. E. PURCELL,
Actg. Secretary.

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I.—GENERAL RULES APPLICABLE TO BOTH EXPLOSIVES AND OTHER DANGEROUS GOODS.

Explosives and dangerous goods which may be accepted.

1. No Explosives or Other Dangerous Goods, except those provided for in Schedules I and II with conditions of carriage will, under any circumstances, be accepted for conveyance by rail.

2. (i) Subject to any exceptions regarding dangerous goods, other than explosives, notified from time to time by the Railway Administration, no consignment of explosives or other dangerous goods shall be forwarded to a railway for despatch by rail nor accepted for conveyance by rail, unless previous notice of the intention to send such consignment has been given as prescribed in clause (ii) and unless the officer in charge of the station from which it is proposed to despatch the consignment has intimated, in writing, that the consignment can be received.

Notice of despatch required..

(ii) The notice required by clause (i) shall be addressed to the officer in charge of the station from which the goods are to be despatched and it shall be sent at least 48 hours before the consignment is sent upon such railway, unless a shorter period is prescribed by the railway Administration concerned. It shall contain a statement of the following particulars, namely:—

Particulars to be given in notice

- (a) The true name, description, mode of packing and quantity of explosives or dangerous goods in the consignment;
- (b) the name and address of the consignor;
- (c) the name and address of the consignee;
- (d) a declaration that the goods are packed in accordance with the directions contained in this pamphlet.

3. All operations connected with the handling of explosives and other dangerous goods must be performed during daylight only, provided that small consignments sent in brake-vans of passenger, mixed, tranship or road van trains may be handled at any hour, all due precautions being taken to prevent accidents. For the purposes of this rule no consignment of more than half a wagon load booked to one station shall be deemed to be a small consignment.

Handling to be done by daylight except "small" consignments.

Dangerous goods under Act IX of 1890.

4. For the purposes of section 59 of the Indian Railways Act, 1890, the commodities mentioned in Schedules I and II are hereby declared to be dangerous goods.

5. For section 59 of the Indian Railways Act, 1890, see pages 161 & 162.

6. Notwithstanding anything contained in these rules, a Railway Administration may notify that it will not convey by rail for the public any particular explosives or other dangerous goods specified in Schedules I and II. After the issue of such a notice, no such explosives or other dangerous goods shall be brought, sent, or forwarded to or upon, any railway of the said Railway Administration.

7. It shall be the duty of every officer in charge of a station to cause every package of explosives or other dangerous goods, which it is proposed to despatch by rail or which has been received at any station for transshipment or delivery to the consignee, to be stored at a safe distance from the station buildings, either in a covered vehicle or completely covered with tarpaulins or such other suitable material, so that it may not be exposed to the sun, and, if necessary, to be protected by a police guard. Small arm ammunition may be stored in the station building, but all ammunition must be kept under lock and key until taken delivery of, or while awaiting despatch.

8. No person shall smoke or take or leave any naked light, unprotected lamp or inflammable article near any vehicles containing explosives or other dangerous goods, or near any place where such goods are stored or are being loaded, unloaded or handled.

9. Unless it be otherwise notified by the railway administration, the loading, unloading and handling of all explosives or other dangerous goods shall be done by consignors and consignees or their servants.

10. It is incumbent on the Railway staff, in the case of every consignment of any explosive or other dangerous goods mentioned in Schedules I and II, to obtain:—

- (a) The special form of consignment note. (*For form, see Appendix I*).
- (b) When the goods are booked at Owner's risk, Risk note Forms D. or G. as the case may be. *For forms of Risk notes, see Appendix (II)*.
- (c) In the case of compressed gases only, a special certificate from the consignor that all Government requirements have been complied with. (*For form see Appendix III*).
- (d) In the case of explosives of groups III and IV only, a certificate granted by an Inspector of Explosives, (or by the Government Chemical Examiner or Analyser, at the time the explosives are imported) or in the case of Ordnance consignments, by the Ordnance Officer concerned, to cover the consignment tendered for despatch. (*For form; see Appendix IV*).

Railway's right to refuse to convey explosives and dangerous goods.

Storing.

Smoking and naked lights prohibited.

Handling to be done by sender and consignee.

Certificates, etc., to be obtained by Railway staff.

Remarks on (e) Invoices issued for consignment of explosives and other dangerous goods must have an endorsement to the effect that the prescribed certificates have been obtained from the senders.

11. (i) A "Dangerous" label, i. e., a white label with a red cross on it shall be affixed to both sides of every vehicle in which explosives or other dangerous goods are stored for delivery or transit and such vehicle shall always be kept locked and sealed locks being provided by the railway administration. The words "Not to be loose shunted" should be printed across the "Dangerous" label in bold type.

(ii) It shall be the duty of the goods clerk and others concerned to see that porters or coolies do not paste railway labels over private labels showing that the contents of packages are explosives or dangerous.

12. Subject to any exceptions from time to time notified by a Railway Administration, the freight on all consignments of explosives or other dangerous goods shall be prepaid.

13. (i) In times of great public emergency, the quantities prescribed in rules 23 and 24 and in schedules I and II may be exceeded and vehicles containing explosives, and other dangerous goods the property of Government, may, at the special request in writing, of the local military authorities, or of the Director General of Ordnance in India, or of the Directors under his control, or of the Assistant Director of Stores or of the Senior Ordnance Officer (including a Superintendent of Factories), be attached to goods, mixed or passenger trains, it being left to the railway authorities to arrange for the safest method of despatch.

(ii) All such certificates will be submitted subsequently to the Agent or Manager of the railway, by the railway official concerned, for information.

(iii) (a) The following general rules should be observed in times of great public emergency when the military authorities request the despatch of petrol (benzine) in large quantities by passenger train :—

(1) Petrol (benzine) must only be packed as laid down in this pamphlet.

(2) Cans or drums containing petrol (benzine) should be loaded and carefully packed in well ventilated iron vehicles. If possible, two dummy iron vehicles which may contain unflammable goods, should be placed between the petrol (benzine) wagons and the passenger carriages and two between them and the rear brake-van. This would give some chance of the petrol (benzine) wagons being detached if they caught fire, without communicating fire to the passenger carriages and also some chance of any vapour issuing from the petrol (benzine) wagons not catching fire at the tail lamp on the brake van.

haulage of the dummy vehicles, if run empty, will be paid for by the military authorities at vehicle rates.

- (3) The consignment of petrol (benzine) should be accompanied by two men provided by, and whose fares will be paid by, the military authorities in the usual way, to guard the petrol (benzine) wagons when halted at stations.
- (4) The petrol (benzine) wagons should be labelled with "Dangerous" labels.
- (5) Most stringent steps should be taken to prevent naked lights being brought near the vehicles containing petrol (benzine)

(6) The Supply and Transport Corps have no special packing regulations for petrol (benzine) as the Ordnance Department have for explosives and they should conform to the packing regulations as laid down in this pamphlet.

(iv) **Petrol (benzine) by special trains:**—The following general rules shall be observed when petrol (benzine) in large quantities is carried by special trains engaged for high Government officials travelling on duty:—

- (1) Petrol (benzine) shall only be packed in strong iron drums, provided with screw stoppers and caps soldered on.
- (2) Only one covered iron wagon for the carriage of petrol (benzine) shall be attached to any one train.
- (3) Drums containing petrol (benzine) shall be loaded and carefully packed in a well ventilated covered iron wagon. Only one layer of drums shall be allowed in the wagon.
The wagon shall be labelled with "Dangerous" labels.
- (4) Two iron vehicles containing unflammable materials or motor cars or motor lorries shall be placed between the petrol (benzine) wagon and the saloons and one iron wagon containing unflammable material or a motor car or motor lorry between the petrol (benzine) wagon and the rear brake van. Provided that if there is no kitchen in the rearmost saloon only one iron vehicle as above need be placed between the petrol (benzine) wagon and the saloons.
- (5) All saloons shall be placed between the engine and the petrol (benzine) wagon.
- (6) Most stringent steps shall be taken to prevent naked lights being brought near the wagon containing the petrol (benzine). No lights or smoking shall be allowed in the iron vehicles on each side of the petrol (benzine) wagon and the engines of any motor cars carried in these vehicles shall not be started in the vehicles.

N. B.—See also sections II & III for regulations applicable to Explosives only and to other dangerous goods only.

II.—RULES APPLICABLE TO "EXPLOSIVES" ONLY.

N. B.—In times of great public emergency, the following rules may be relaxed as laid down in Rule 13, page 553.

Classification of
Explosives.

14. For the purposes of these rules, "Explosives" shall be grouped as follows:—

Group	I	...	...	Gunpowder.
"	II	...	...	Nitrate-mixture.
"	III	...	...	Nitro-compound.
"	IV	...	...	Chlorate-mixture.
"	V	...	...	Fulminate.
"	VI	...	...	Ammunition.
"	VII	...	...	Firework.

When any explosive falls within more than one of the said groups, it shall be deemed to belong exclusively to the latest of such groups.

15. No explosive shall be tendered for conveyance or be conveyed unless
Marking and packing. packed and marked in accordance with the provisions of rule 16 and of schedule I.

16. Whatever be the nature of the explosive and to whatever group it may
Packing. belong, the following general rules shall be observed:—

- (a) The interior of every package shall be free from grit and otherwise clean.
- (b) Save as is provided in schedule I, there shall not be any iron or steel in the construction of any package, unless the same is covered with suitable material so as effectually to prevent the exposure of such iron or steel.

Packing (c) Every package, when actually used for the packing of one explosive, shall not be used for the packing of any other explosive or any other article or substance:—

Provided that this rule shall not prevent the packing of inner packages containing a propellant in an outer package with inner packages containing gunpowder or other propellant.

Provided also that with Ammunition (Division 1), there may be packed in the same package any article which is not of an inflammable or explosive nature; or liable to cause fire or explosion.

- (d) Nothing in this rule shall be deemed to prohibit the use of an additional package, whether inner or outer:—

Provided that such additional package shall not be

character as shall have been prohibited in writing by the Chief Inspector of Explosives.

Explanation—Unless the context otherwise requires:—

the expression "outer package" means a box, barrel, case or cylinder of wood, metal or other solid material, of such strength, construction and character that it will not be broken or accidentally opened, nor become defective or insecure whilst being conveyed, and will not allow any explosive to escape;

the expression "inner package" means a substantial case, bag, canister or other receptacle, made and closed so as to prevent any explosive from escaping;

the expression "authorised explosive" means an explosive included in a list of authorised explosives prepared by the Chief Inspector of Explosives with the Government of India and in force for the time being;

the expression "propellant" means an authorised explosive of group III adapted and intended exclusively for use as a propelling charge in cannon or small arms.

- (e) The method of packing authorised explosives of the various groups, respectively, and the maximum amount which may be packed in any one package, shall be those indicated in schedule I.
- (f) Explosives which are not authorised explosives shall be packed subject to such special precautions as may be prescribed by the Chief Inspector of Explosives.
- (g) To meet special cases, the Chief Inspector of Explosives may, by order in writing, subject to such conditions (if any) as he may think fit to impose, relax any of the conditions imposed by the above clauses.
- (h) On the outermost package there shall be affixed in conspicuous characters, by means of a label or brand or other mark, the name of the explosive and the name of the manufacturer or sender. For all explosives (other than gunpowder, Group I, and safety fuses, Group VI, Division I), the word "Explosive," and the group and division to which it belongs, shall also be marked; and for Groups III and IV the date of manufacture of the explosive or of its issue from the factory or such sign, as may be approved by the Chief Inspector of Explosives, shall also be marked.
- (i) Where an outer package contains more than one explosive, the marking required shall be affixed separately in respect of each explosive so contained.

17. The railway administration may refuse to receive any packages which they suspect to contain any explosive packed or sent in contravention of these rules. And in case any package, which the railway administration suspect, is found upon any railway, the railway administration may open, or require to be opened, such package to ascertain the fact, at the risk and expense of the consignor and may return the explosive contained in the package to the consignor at his risk and expense, keeping the packages pending such return, in the manner prescribed in rule 7.

Railway authorised to refuse or open suspected packages.

18. Subject to any rule to the contrary in this Pamphlet and in Schedules I & II:—

(a) Any explosive which contains its own means of ignition, must be so certified by the sender, and it shall not be conveyed in any vehicle which is being used for the conveyance of an explosive not of the same group and division, unless it is sufficiently separated therefrom to prevent any fire or explosion which may take place in one such explosive being communicated to another.

(b) Explosives must not be loaded in the same vehicle with other dangerous goods.

(c) Explosives must not be loaded in the same vehicle as ordinary goods.

19. Senders of explosives are required to telegraph to the consignees advising them of the despatch of the consignments. In the case of samples of Explosives forwarded to the Chemical Inspector, Indian Ordnance Department, Kirkee, telegraphic intimation of the despatch of such explosives is not necessary. In the case of Military consignment despatched by the Military Department, telegraphic intimation of the despatch of the explosives is not necessary but the usual intimation to the consignee must be sent by post by the consignor.

20. The Station Master of the despatching station will on receipt of a consignment of explosives, telegraph to the receiving Station Master, who should at once advise the consignee to be prepared to take delivery in accordance with rule 30. Where there is a break of gauge, the Station Master of the transhipping station should also be advised.

21. (i) Subject to the exceptions noted in clause (ii) below, and to any other exceptions from time to time notified by railway administrations the minimum weight for charge for consignments of explosives by goods train is 54 maunds for broad gauge and 40 maunds for metre and narrow gauge.

Minimum weight for charge by goods train.

21. (ii) The following descriptions of explosives (which may be loaded with ordinary merchandise provided that the railway vehicle used for the purpose does not contain any goods, articles or substance, liable to cause or communicate fire or explosion) are charged on actual weight:—

	Serial No.
Capped safety cartridge cases, if otherwise empty	15
Cartridges, safety, <i>viz.</i> , pin-fire cartridges for pistols	16
Cartridges, safety, other than pin-fire cartridges for pistols	15
Nobel's safety electric time fuse	17
Percussion caps	
Railway fog signals	
Safety fuses for blasting	
Safety electric fuses	
Toy fireworks	29

22. Ammunition or other explosives accompanying troops may be sent with the special troop trains by which the troops travel, under the rules for marshalling and stowing prescribed by these rules including Schedule I. Any deviation from these rules necessary to enable the explosives to accompany the troops must be acknowledged in writing by the Office Commanding the troops, in same way as is provided for in rule 13.

23. (i) When carried by goods train, the vehicles containing explosives should preferably be placed at the end of the train away from the locomotive and must be close-coupled to one another as well as to the adjoining wagons and must be preceded and followed by three wagons not loaded with explosives or other traffic of an inflammable nature:—

Provided as follows:—

- (a) On the Darjeeling Himalayan Railway vehicles containing explosives and adjoining wagons need not be close-coupled to one another; and
- (b) On the Nilgiri and Peralam Karaikkal Railway only one wagon need intervene between the locomotive and vehicles containing explosives.

(ii) Not more than five powder-vans (*i. e.*, vehicles specially constructed for the carriage of explosives) containing explosives shall be conveyed by any one train and the quantity in any one powder-van shall not exceed the carrying capacity or 10 tons, whichever is less, and shall not exceed 2 tons in any additional powder van. Thus, the maximum total loads carried in one

Maximum number of vehicles and load permitted

train for 1, 2, 3, 4 and 5 powder vans would be 10, 12, 14, 16 and 18 tons, respectively. In the case of explosives, serial Nos. 3, 6, 9 and 28, the load of a train would be 5 or 3 tons for one powder van according as the packages are rectangular and of uniform size or otherwise, *vide* rule 28 (iii) plus 2 tons for each additional powder van, giving maximum loads of 13 or 11 tons, respectively. If covered iron vehicles are used in place of powder vans, the quantity must be reduced as laid down in rule 26 (iii).

Note.—The maximum weight limits laid down in this rule apply to the gross weight of Explosives including packing.

(iii) When the train is being marshalled, wagons loaded with explosives may be shunted by a locomotive, only if they are separated from the engine by not less than three wagons containing no explosive nor easily inflammable substance. This precaution is not necessary with powder vans. The speed of these movements must be restricted to five miles an hour; they must be superintended by a duly authorised officer, who shall be held responsible for the observance of these orders. Loose shunts are strictly prohibited for any vehicle containing explosives.

Despatch of explosives by mixed train. 24. Explosives may be carried by mixed train where goods trains are not running subject to the following conditions:—

- (i) That the explosives are loaded in powder vans;
- (ii) that not more than one powder van is forwarded by any one train;
- (iii) that the maximum quantity of the explosives loaded in the powder van does not exceed ten tons or such less quantity as may be prescribed in column 7 of Schedule 1;
- (iv) that the powder van is preceded and followed by three goods vehicles, not loaded with explosives or other traffic of an inflammable nature;
- (v) that the powder van is close-coupled to the adjoining vehicles;
- (vi) that directly the powder van arrives at a section on which goods trains are running, it is detached from the mixed train.

Despatch of explosives by passenger train. 25. No explosive shall be conveyed by passenger train except of the kinds and in the manner specified in schedule I or as authorised in rule 13.

Powder vans to be used when despatching explosives. 26. (i) All explosives (except where specially exempted in these rules) must be carried in powder vans.

(ii) When consigned by the Ordnance Department, covered iron vehicles may be used for despatches by goods train, if powder vans are not available.

(iii) Wherever in these rules for explosives the use of covered iron vehicles is permitted instead of powder vans, the quantity in any one covered iron vehicle shall not exceed two-thirds of the carrying capacity or 10 tons, whichever is less, and shall not exceed 2 tons in any one other covered iron vehicle.

Maximum quantity to be conveyed in covered iron vehicles.

27. If the vehicles employed in the transport of explosives are provided with brakes, other than iron brakes, the brakes thereon shall on no account be worked while the wagons are running with a train, nor shall brakes, other than iron brakes, on vehicles immediately adjoining such wagons, be worked while such wagons are so running.

Brakes.

28. The following restrictions must be observed when loading explosives:—

(i) Vehicles must be examined to see that they are sparkproof and have Condition of vehicles, been cleaned out before they are loaded.

(ii) All iron or steel in the interior of the portion of the carriage or vessel with which the package containing any explosives is or may come in contact, shall be effectually covered with leather, wood, cloth or other suitable material. Hair-cloth, hides, or other suitable materials shall be spread on the floor of the vehicles and between each layer of packages, except when the packages are covered with gunny or felt, and wedges will be supplied by the sender to whom they must be returned when done with. Both hair-cloth and wedges must be shewn on the invoice and returned free by the first train.

Loading of explosives

(iii) Packages containing explosives must be so secured as to prevent movement during transit. They shall not ordinarily be stowed in more than three layers one above the other and in the case of serial Nos. 3, 6, 9 and 28, one layer; but if they are rectangular and of uniform size (provided they are double packages) they may be stowed in any number of layers not exceeding five.

Stowing of explosives.

(iv). Barrels containing explosives must not be set on end, but laid on their sides firmly secured with wooden wedges.

Explosives in barrels.

29. (i) In loading or unloading, casks and packages containing explosives shall be passed from hand to hand and not rolled along. They shall not be thrown down or dropped, but shall be carefully deposited and stowed.

Handling of explosives.

(ii) Boots or shoes with iron or steel nails, heels or tips must not be worn by persons handling any explosives.

Boots and shoes.

(iii) Not more than five vehicles containing explosives shall be loaded or unloaded at any railway station at any one time.

Number of vehicles to be dealt with at one time

(i) Except as provided for in rule 3, all explosives shall be sent to the forwarding station and shall be received by the railway servants between sunrise and sunset and shall be removed by the consignees from the receiving station during the twelve hours of daylight following their arrival: if this condition is not strictly complied with, the railway administration may return the consignment to the consignor at his risk and expense.

Receipt and delivery
of explosives during
daylight only.

(ii) Subject to the provisions of rule 3 and clause (i) of rule 30, the loading and unloading of explosives when once begun shall be diligently proceeded with until the same is completed.

Loading and unloading
to be continuous.

31. (i) Any of the officers mentioned in clause (ii) may, within the areas specified in that clause, but subject to the provisions of the Indian Arms Act, 1878, and of any rules for the time being in force thereunder, in cases to which that Act applies:—

Officers entitled to
inspect vehicles, etc

(a) Enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, sold, transported or imported under a license granted under the rules made under the Indian Explosives Act, 1884, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, sold, transported or imported in contravention of the said Rules or Act and may enter, inspect and examine any magazine or place in which explosives are stored;

(b) search for explosives therein;

(c) take samples of any explosives found therein, on payment of the value thereof, if payment can be made at the time the samples are taken; and

(d) seize, detain, remove and, if necessary, destroy or otherwise render harmless any explosive found therein in respect of which he has reason to believe that any of the provisions of the said Rules or Act have been contravened.

(ii) The officers and areas referred to in clause (i) are:—

Officers.	Areas.
The Chief Inspector and Inspectors of Explosives	In all parts of British India.
All District Magistrates... ..	Within their respective Districts.
All Magistrates subordinate to the District Magistrate	Within their respective jurisdictions.
The Commissioner of Police and all Police officers of rank not below that of Inspector, or, if the Local Government so directs of sub-Inspector, if specially deputed in this behalf by the Commissioner of Police.	In Presidency towns or their suburbs and in Rangoon.
All Police officers of rank not below that of Inspector, or, if the Local Government so directs, of Sub-Inspector.	Within the respective areas over which their authority extends.

32. The following explosives alone may be carried, otherwise than by rail, across any railway bridge over which reasonable facilities for the conveyance thereof by rail are afforded by the railway administration.

Carriage of explosives across bridges otherwise than by rail

Group I—Gunpowder group, up to 5 lbs. in weight.

Group III—Nitro-compound group, upto 5 lbs. in weight.

Group VI—Ammunition of Division 1, in any quantity.

Group VI—Ammunition of Divisions 2 and 3, up to 5 lbs. in weight.

Group VII—Firework, upto 10 lbs. in weight.

III—RULES APPLICABLE TO "OTHER DANGEROUS GOODS" ONLY.

33. In addition to explosives, as defined in section 4 of the Indian Explosives Act, 1884, the following goods shall be deemed to be dangerous goods for the purposes of the Indian Railways Act, 1890:—

Definition of dangerous goods.

I.—Inflammable liquids:—

Group A.—Liquids, the vapours of which have flashing points below 76° Fahr.

Group B.—Liquids, the vapours of which have flashing points at 76° Fahr. and higher temperatures.

Proviso (1)—In ascertaining the flashing point of petroleum for the purposes of this rule, regard shall be had to the proviso to section 2 (b) of the Indian Petroleum Act, 1899.

Proviso (2)—Lubricating oils having a flashing point at or above 200° Fahr. shall not be deemed to be dangerous goods for the purposes of this rule.

II.—Dangerous, corrosive and poisonous chemicals.

III.—Miscellaneous dangerous articles.

34. The dangerous goods, specified in schedule II, shall only be accepted for conveyance by rail or be conveyed by rail, subject to rules and in accordance with the conditions set forth therein against each specified class of goods.

35. Every package of dangerous goods shall be marked in conspicuous characters with the name of the article or articles which it contains.

36. Dangerous goods shall be carefully handled and shall not be stored in any of the railway administration's enclosed sheds or warehouses.

37. There is no restriction as to the maximum quantity of dangerous goods other than explosives which may be despatched by goods train, but such goods shall be loaded in covered iron vehicles.

38. Subject to any rules to the contrary in this pamphlet and in Schedule II:

I. Dangerous goods must not be loaded in the same vehicle as explosives.

II. Dangerous goods must not be loaded in the same vehicle as ordinary goods.

39. Except where otherwise stated in column 5 of schedule II, dangerous goods may only be sent in wagons by mixed train where no goods trains are running. In times of great public emergency this rule may be relaxed as laid down in rule 13.

40. Only one kind of dangerous goods and no other kind of goods shall be put into one case, except that different articles of "Inflammable liquids—group A" may be packed together.

Note.—The Indian Ordnance and Medical Departments, and the Stores Department of the India Office, are exempt from this rule provided that a written declaration of the contents of package is given by a duly authorised officer, and that it is certified on the consignment note that the goods have been packed in accordance with the departmental regulations relating to the packing of such goods.

41. Subject to any exception notified from time to time by railway administration, the minimum weights for charge of dangerous goods, other than explosives, are as follows:—

Dangerous goods which can be loaded in covered iron goods vehicles but not with explosives nor with ordinary merchandise.

{	"Urgent" consignments, <i>i. e.</i> , consignments booked on days other than those on which a regular service is run ...	... 20 maunds.
	"Deferred" consignments, <i>i. e.</i> , consignments booked on days on which the regular service is run ...	... Actual weight.

Dangerous goods which are permitted to be loaded in covered iron goods vehicles with ordinary merchandise provided that such articles are not of such a nature as to communicate fire, &c. ...

"Urgent" or
"Deferred." ... Actual weight.

42. If, upon the arrival of any dangerous goods (other than explosives) at their destination, the consignee does not take delivery of and remove the same within the time notified by the Railway Administration, they may be kept in the vehicle in which they were carried until delivery is effected, or until they are disposed of under the provisions of section 56 of the Indian Railways Act, 1890 or otherwise.

Storing until delivery taken.

N. B.—See also Section I for regulations applicable to both "Explosives" and "Other Dangerous Goods."

Schedule I-Explosives
AND
Schedule II-other dangerous goods.

SCHEDULE I-EXPLOSIVES.

Serial No.		Description of Explosives		General Classification.		The Indian Ordnance and Medical Departments, and the Stores Department of the India Office, are exempt from the rules in these columns, provided that a written declaration of the contents of the package is given by a duly authorized officer, and that it is certified on the consignment note that the goods have been packed in accordance with the departmental regulations relating to the packing of such goods.			
1	2	3	4	5	6	General packing regulations.	Amount in any one outer package.	Amount in any one inner package.	
	EXPLOSIVES.								
	Group I—Gunpowder.								
1	Gunpowder ...	10	9			When the quantity in any one consignment does not exceed 5 lbs. in amount, a single outer package; otherwise	100 lbs.	100 lbs.	18 tons in 5 powder vans. See rule 24.
						A double package, the inner and outer packages being as defined in rule 16.	50 lbs.	25 lbs.	See rule 23(ii). Note—by brake-van of mixed or passenger train—"propellants for sporting purposes, may be carried up to a maximum of 80 lbs. provided that they are packed in double cases, and are contained in tin canisters containing

not more than 5 lbs. each; packed in a stout wooden case with an outer covering of tin or zinc completely spark-proof, or in metal lined cases of a pattern approved by the Chief Inspector of Explosives. But no outer case shall contain more than 25 lbs. of these propellants.

Except for the 80 lbs. limit, none of the above restrictions apply to Government gunpowder.

By mixed train only-10 tons. See rule 24.

By mixed train—5 tons, if packages are rectangular and uniform; otherwise 3 tons. See rules 23 (ii), 24 and 28 (iii).

By brake-van of mixed or passenger train in the form of cartridges up to a limit of 5 lbs.

18 tons in 5 p.
wder vans.
See rule 23(ii)

13 tons in 5 power vans if packages are rectangular and uniform; otherwise 11 tons. See rules 23 (ii) and 28 (iii).

50 lbs.

50 lbs.

50 lbs.

50 lbs.

...

As for Serial No. 1, provided that either the outer or inner package shall be thoroughly waterproof, and both shall be without metal in the construction thereof.

GROUP II.
Nitrate-Mixture.

2° Chilworth special powder

GROUP III. Nitro-Compound.

DIVISION I.

(Other than Propellants).

A. I. Monobel	...
Victor powder	...
Ardeer gelignite	...
Blasting gelatine	...
Cambrite	...
Dynamite, Farmer's	...
Dynobel	...
Gelatine dynamite	...
Gelignite	...
Monobel, No. 1	...

EXPLOSIVES.

1	2	3	4	5	6	7	8
	EXPLOSIVES.-(Contd.)						
	GROUP. III						
	Nitro-Compound.-(cont)						
	DIVISION I.						
	(Other than Propellants)						
	Propellants.						
	Rexite ...	10					provided that detonators are not carried in the same compartment.
	Samsonite ...	10					
	Arkite ...	10					
	Viking powder, No. 1†	10					
	A. 2. Monobel†	10					
	Ballistite ...	10					By mixed train only-10 tons. See rule 24.
	Chilworth smokeless powder, No. 2 ...	10					
	Cordite ...	10					
	Cordite, M. D....	10					
		10					
				50 lbs.	50 lbs.	18 tons in 5 powder vans. See rule 23(ii).	The note in column 8, Serial No. 1 above, applies to these propellants also.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only-18 tons in 5 powder vans. See rule 23 (ii).
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.
							By brake-van of mixed or passenger train up to a limit of 50 lbs. provided that detonators or other explosives are not carried in the same compartment.
							Carried for Government only.
							By mixed train-10 tons See rule 24.

<div> <div>6</div> <div> Guncotton, dry, in form of primers. ... Guncotton, yam... </div> </div>	<div> <div>9</div> <div>9</div> </div> Government packing regulations.	<div> <div>10</div> <div>10</div> </div>	<div> <div>9</div> <div>9</div> </div>	<div> <div>10</div> <div>10</div> </div>	<div> <div>9</div> <div>9</div> </div>	<div> <div>10</div> <div>10</div> </div>	<div> <div>9</div> <div>9</div> </div>
<div> <div>7</div> <div> Picric acid ... Di-nitro-phenol, dry ... [See Appendix V.] </div> </div>	<div> <div>9</div> <div>9</div> </div> When the quantity in any one consignment does not exceed 5 lbs. in amount, a single outer package; otherwise. A double package, the inner and outer packages being as defined in rule 16.	<div> <div>9</div> <div>9</div> </div>	<div> <div>9</div> <div>9</div> </div>	<div> <div>9</div> <div>9</div> </div>	<div> <div>9</div> <div>9</div> </div>	<div> <div>9</div> <div>9</div> </div>	<div> <div>9</div> <div>9</div> </div>
<div> <div>8</div> <div> Picric powder ... </div> </div>	<div> <div>9</div> <div>9</div> </div> As for Serial No. 7 ...	<div> <div>9</div> <div>9</div> </div>	<div> <div>9</div> <div>9</div> </div>	<div> <div>9</div> <div>9</div> </div>	<div> <div>9</div> <div>9</div> </div>	<div> <div>9</div> <div>9</div> </div>	<div> <div>9</div> <div>9</div> </div>

1	2	3	4	5	6	7	8
	EXPLOSIVES.—Contd.						
	GROUP III						
	Nitro-Compound.—Contd.						
	DIVISION 1.—Contd.						
	<i>(Propellants.)</i>						
	Alumatol	10	When the quantity in any one consignment does not exceed 5 lbs. in amount, a single outer package; otherwise	50 lbs.	50 lbs.	13 tons in 5 powder vans if packages are rectangular and uniform; otherwise 3 tons. See rules 23 (ii), 24 and 28 (iii)	By mixed train—5 tons, if packages are rectangular and uniform; otherwise 3 tons. See rules 23 (ii), 24 and 28 (iii)
	Amatol	10					
	Ammonal	10					
	Negro powder, No. 2	10					
	Roburite	10	A double package, the inner and outer packages being as defined in rule 16.				
	Tonite or cotton powder	10					
	Tri-nitro-toluol (trotyl)... ..	10					
	Amberite, No 2... ..	10					
	Chilworth smokeless powder	10					
	Chilworth smokeless sporting powder	10					

1	2	3	4	5	6	7	8
	EXPLOSIVES—(Contd.)						
	GROUP IV.						
	Chlorate-Mixture.						
	DIVISION 1.						
11	(None authorised in India at present.)				Not carried.		
	DIVISION 2.						
12	(None authorised in India at present.)				Not carried.		
	Group V.—Fulminate.						
13	(No Fulminate is permitted to be imported into India.)				Not carried.		
14	Fulminate of mercury (Fulminate of mercury is manufactured in Government factories and is consigned only by Government officers.)	10	9	Government packing regulations.		Not carried....	For Government only; Fulminate of mercury may be carried in the rear brake-van of mixed or passenger trains in quantities not exceeding 1 ounce, provided that no explosive of this group may be carried in the same train with any other explosive of any other group and division unless it be sufficiently

separated therefrom to prevent any fire or explosion which may take place in one such explosive being communicated to another.

Group VI. Ammunition

DIVISION I.

15 Cartridges, safety, other than pin-fire cartridges for pistols ...

(Note.—Capped safety, cartridge cases, if otherwise empty, are exempt from these rules, provided that they must be despatched in the manner laid down in rule 10.)

9 A single outer package, provided that iron or steel used in the construction of any package containing explosives of this Division may be exposed—see rule 16 (b), and that bulleted cartridges of a calibre exceeding 0.5 inch and belonging to this Division shall be packed in such a manner that the point of any bullet cannot come in contact with the cap of another cartridge.

unlimited

...

SCHEDULE I.

No restriction as to maximum quantity.
Special condition—(ii) The restrictions regarding the number of vehicles on a train (rules 23 (ii) and 24 (ii) and the amount loaded in each vehicle rules) 23 (ii) and 26 (iii) do not apply.

(ii) Safety cartridges may be loaded in covered iron vehicles.

(iii) Safety cartridges may be loaded in covered iron vehicles with other ordinary goods provided that the railway vehicle used for the purpose does not contain any articles or other substance liable to cause or communicate fire or explosion.

(iv) The words "not liable to explode in bulk" shall be added to the marking required by para 16 (h)

(v) If the packages are packed in tin lined service boxes, the precautions regarding stowing under rule 28 (iii) need not be applied.

(vi) May be carried by brake-van of mixed or passenger train without restriction.

1	2	3	4	5	6	7	8
	EXPLOSIVES.-(Contd.) GROUP VI. AMMUNITION.-(Contd.) DIVISION 1.—Contd.						
16	Cartridges, safety <i>viz</i> pin-fire cartridges for pistols	10	<p>(a) <i>Not exceeding 50 in number in any one consignment.</i>—So packed in a single package that the bases lie alternately in opposite directions. The bases and pins shall be so fitted into perforations in millboard or other suitable material as to prevent the firing of any one of the said cartridges by an explosion in any other of the said cartridges.</p> <p>(b) <i>Exceeding 50 in number.</i>—In an inner and outer package, the cartridges being packed in inner packages with millboard as above required.</p>	50 in number.	.....	
	Igniters, safety fuze ... Noble's safety electric time fuze	10 10		2,500 in number.	50 in number.		

A for serial No. 15 above, provided that in the case of pin-fire cartridges there shall be added the words "pin-fire cartridges" to the marking on the package.

As for serial No. 15 above.

.....

Unlimited.

A single outer package as above.

Government packing regulations.

9

10

18 Cartridges for cannon ...

9

Carried for Government only. 18 tons in 5 powder vans. See rule 23(ii.)

Carried for Government only. By mixed train only—10 tons. See rule 24. The note in column 8, Serial No. 1, applies to these cartridges when consigned by Government.

DIVISION 2

(Comprising any ammunition which does not contain its own means of ignition and is not included in Division 1.)

Cartridges for small arms which are not safety cartridges.

Cordieu bickford

Electric fuzes

Electric primers

10

10

10

10

9

9

9

9

SCHEDULE I.

1	2	3	4	5	6	7	8
	Explosives.—(Contd.) GROUP VI. Ammunition.—(Contd.) DIVISION 2—Contd. (Comprising any ammunition which does not contain its own means of ignition and is not included in Division 1.)						
	Fuzes for shells ...	10					
	Fuze, instantaneous ...	10	A single outer package...	100 lbs.	.....	15 tons in 5 powder vans. See rule 23 (ii)	By mixed train only—10 tons. See rule 24. Cordeau bickford electric fuzes, electric primers, fuzes for shells, fuze instantaneous, portfires and quick match may be carried for Government as laid down for Serial No. 15 above.
	Fuze lighters ...	10					
	Port-fires ...	10					
	Quick match ...	10					
	Tubes for firing explosives ...	10					
	War rockets ...	10					
20	Relays for bombs (for air craft) ...	10	Government packing regulations.			Carried for Government only—by mixed train only—10 tons. See rule 24. May be carried for Government as laid down for serial No. 15.	

<p>21</p> <p>Bombs filled— Trench howitzer Trench mortar Incendiary (for air craft)</p>	<p>10</p>	<p>5</p>	<p>Government packing regulations.</p>	<p>Carried for Government only—by mixed train—10 tons. See rule 24. By brake-van of mixed or passenger train, such number of shells, grenades or bombs as contain not more than 80 pounds of gun-powder or lyddite and explosive, <i>vide</i> Serial No. 1.</p>
<p>Filled shells not containing their own means of ignition and closed by a substantial metal plug ... Grenades, hand, filled without detonators) ...</p>	<p>10 9</p>	<p>9</p>	<p>Government packing regulations.</p>	<p>Carried for Government only—18 tons in 5 powder vans. See rule 23 (ii).</p>
<p>22 Quick firing ammunition plugged with dummy primers.</p>	<p>10</p>	<p>9</p>	<p>Government packing regulations.</p>	<p>Carried for Government only—By mixed train—10 tons. See rule 24. By brake-van of mixed or passenger train up to a limit of 8 cartridges.</p>
<p>DIVISION 3. (Comprising any ammunition which contains its own means of ignition and is not included in division 1.)</p>	<p>10</p>	<p>9</p>	<p>Government packing regulations.</p>	<p>Carried for Government only—By mixed train only—10 tons. See rule 24. By mixed train only—10 tons. See rule 24. Fuses for shells, friction tubes, tubes for firing explosives and percussion primers may be carried for Government as laid down for Serial No. 15.</p>
<p>Cartridges for small arms which are not safety cartridges.</p>	<p>10</p>	<p>9</p>	<p>50 lbs.</p>	<p>2 lbs. or 10 in number whichever be the greater.</p>
<p>Friction tubes ...</p>	<p>10</p>	<p>9</p>	<p>As for serial No. 1, provided that bullet cartridges of a calibre exceeding 0.5 inch and belonging to this Division shall be packed in such a manner that the point of any bullet cannot</p>	<p>By mixed train only—10 tons. See rule 24. Fuses for shells, friction tubes, tubes for firing explosives and percussion primers may be carried for Government as laid down for Serial No. 15.</p>
<p>Fuses for shells ...</p>	<p>10</p>	<p>9</p>	<p>Government packing regulations.</p>	<p>Carried for Government only—18 tons in 5 powder vans. See rule 23 (ii).</p>

SCHEDULE 1.

1	2	3	4	5	6	7	8
	EXPLOSIVES.-(Contd.).						
	GROUP-VI						
	Ammunition.-(Contd.)						
	DIVISION 3.-(Contd.)						
	<i>(Comprising any ammunition which contains its own means of ignition is not included in Division 1.)</i>						
23	Nobel's, electric detonators time fuzes ...	10	9	} come in contact with the cap of another cartridge.			Provided that no explosive of this group may be carried in the same train with any other explosive of any other group and division, unless it be sufficiently separated therefrom to prevent any fire or explosion which may take place in one such explosive being communicated to another.
	Percussion primers ...	10	9				
	Tubes for firing explosives ...	10	9				
24	Military electric tubes...	10	9	Government packing regulations.		Carried for Government only-By mixed train only-18 tons in 5 powder vans. See rule 23(ii)	Carried for Government only-By mixed train 10 tons. See rule 24. provided that a covered iron vehicle may be used in all cases. By brake van of mixed or passenger train without restriction.

(a) *Not exceeding 1,000 in any one consignment.*—As for serial No. 1, provided that detonators and the spaces between the same and between the sides of the inner package and the said detonators shall all be filled, as far as practicable, with fine saw-dust or other similar material; a layer of felt or other soft yielding material shall be placed between both ends of all the detonators and the interior of the inner package, in which the same are placed, in such manner and so secured that both ends of the detonators will rest upon the said cotton wool or other material; every inner package, if of metal, to be lined throughout with paper or other soft material; and

(b) *exceeding 1,000 detonators.*—The detonators shall be packed in inner packages, with saw-dust and cotton wool as

100 in number.

1,000 in number.

18 tons in 5 powder vans. See rule 23(ii).

By mixed train—10 tons See rule 24.

100 in number.

1,000 in number.

Provided that no explosive of this group may be carried in the same train with any other explosive of any other group and division unless it be sufficiently separated

Detonators

...

... 10

9

SCHEDULE I.

EXPLOSIVE-(Contd.).

GROUP VI.

Ammunition.-(Contd.).

DIVISIONS 3.-(Contd.)

(Comprising any ammunition which contains its own means of ignition and is not included in Division 1).

above described, Such inner packages shall be placed inside a substantial case of wood or metal, made and closed so as prevent any of the inner packages escaping therefrom, and such case shall be placed inside an outer package in such manner and so secured as to have a clear space of not less than three inches between the case and every part of the interior of the said outer package notwithstanding that such clear space may, if preferred, be filled with saw-dust, straw or other similar material, or may contain a light frame-work or battens of wood to keep the case aforesaid in position in the outer package; and

therefrom to prevent any fire or explosion which may take place in one such explosive being communicated to another.

By mixed or passenger train detonators packed according to the rule in column 4 may be carried to the number of 200 in the rear brake van: provided that in no case the amount of fulminate of mercury in the package or packages containing the aggregate 5 ounce (a certificate to this effect being given by the consignor); provided also that no other explosive is carried in the same compartment.

26	Electric detonators	...	10	9	As for Serial No. 1, provided that where the number in any outer package exceeds 3,000, such outer package shall be provided with handles or other contrivance by means of which it can be safely and conveniently carried.	5,000 in number.	100 in number.	18 tons in 5 powder vans. See rule 23 (ii)	By mixed train-10 tons See rule 24.
					(c) Where the number of detonators exceeds 5,000, such outer package shall be provided with handles or other contrivance, by means of which it can be safely and conveniently carried.				Provided that no explosive of this group may be carried in the same train with any other explosive of any other group and division, unless it be sufficiently separated therefrom to prevent any fire or explosion which may take place in one such explosive being communicated to another.
									By mixed or passenger train electric detonators packed according to the rule in column 4 may be carried to the number of 200 in the rear brake van; provided that in no case the amount of fulminate of mercury in the package or

SCHEDULE I.

1	2	3	4	5	6	7	8
	EXPLOSIVES.-(Contd.)						
	GROUP VI.						
	Ammunition.-(Concl'd.)						
	DIVISION 3.-(Concl'd.)						
	<i>(Comprising any ammunition which contains its own means of ignition and is not included in Division I.)</i>						
							packages containing the detonators excepted in the aggregate 3 ounces (a certificate to this effect being given by the consignee), provided also that no other explosive is carried in the same compartment.
	Grenades, hand filled ...	10				Carried for Government only.	Carried for Government only.
	Grenades, hand or rifle filled ...	10				only. 18 tons in 5 powder vans. See rule 33 (ii).	By mixed train only-10 tons. See rule 24.
	Grenades, rifle filled ...	10					
	Quick firing ammunition	10					
	Plugged but primed, fuze	10					
	Plugged and primed	10					
	Shells, filled and fuze	10					

GROUP VII

Firework

DIVISION 1.

28 Firework compositions ...
(None authorised in
India as yet.)

10

9 Double package, the inner
package being hermetically
closed and contained in an
outer package as defined
in rule 16.

20 lbs.

1 lbs.

13 tons in 5 po-
wder vans if
packages are rect-
angular and uniform;
otherwise 3 tons. See
rules 23 (ii), 24 and
28 (iii).

SCHEDULE I.

585

Provided that no explosive of this
group may be carried in the
same train with any other explosive
of any other group and division
unless it be sufficiently separated
therefrom to prevent any fire or
explosion which may take place in
one such explosive being communi-
cated to another.

DIVISION 2.

Aluminium torches ...
Amorces ...
Candles, smoke, ground
Mark II
Chinese crackers ...
Sparklers ...
Fireworks, manufactured
Magnesium torches ...

10
10
10
10
10
10
10

9 Single outer package,
provided that iron or
steel used in the const-
ruction of any package
containing explosives of
this Division may be
exposed—*vide* rule 16 (b)

100 lbs.

...

18 tons in 5 po-
wder vans.
See rule 23 (ii).

By mixed train only—10
tons. See rule 24.

Provided that no explosive of this
group may be carried in the same
train with any other explosive of
any other group and division unless

1	2	3	4	5	6	7	8
	EXPLOSIVES.-(Contd.)	R.R.O.R.					
	GROUP VII.						
	Fireworks.-Contd.						
	DIVISION 2.—Contd.						
	Pyrotechnic matches ...	10					
	Rockets, other than war rockets ...	10					
	Light signals ...	10					
	NOTE.— Toy fireworks such as paper caps for toy pistols, are exempt from these rules, provided that the amount of each does not exceed the following:—	10					
	Amorces (paper caps)—3 dozen boxes of 100 or 6 dozen boxes of 50.	10					
	Christmas crackers—Unlimited.	10					
	Coloured fire—3 dozen boxes of 100 or equivalent quantity in smaller boxes ...	10					
	Throw-downs. 36 dozen.	8					

it be sufficiently separated therefrom to prevent any fire or explosion which may take place in one such explosive being communicated to another.

Toy fireworks of the kinds mentioned in column 2 may be carried in ordinary goods vehicles so long as the vehicles do not contain any other article or substance liable to cause or communicate fire or explosion. Chinese crackers may, subject to the weight limits laid down in rules 24 and 26, also be carried during the months of July to March under the orders of the District Traffic Officer when the number or size of consignments offering is such that in his judgment serious delay would be caused by the observance of the rule in covered iron or steel goods vehicles, but not with other goods in the same vehicle.

N.B.—When Chinese crackers are allowed to be loaded in iron vans, special care should be taken in loading so as to prevent the boxes getting broken and no broken boxes should be loaded in the vans.

Carried for Government only.—
By mixed train 10 tons.
in 5 powder See rule 24.
vans. See rule 23 (ii).
or passenger train—

1. In the case of cartridges such number of cartridges as contain not more than 80 pounds of explosive, *vide* Serial No. 1.

2. In the case of shells or flares, up to maximum of four shells or flares.

Provided that no explosive of this group may be carried in the same train with any other explosive of any other group and division, unless it be sufficiently separated therefrom to prevent any fire or explosive which may take place in one such explosive being communicated to another.

Government packing regulations.

Cartridges-illuminating...	10	9
Cartridges signal—	10	9
Green		
Red		
White		
Signals mortar smoke—	10	9
Blue		
Red		
Yellow		
Smoke balls	10	9
Flares parachute (for air craft)	10	9
...		
Star shell	10	9

SCHEDULE II-OTHER DANGEROUS GOODS.

Serial No.	Description of other dangerous goods.	General classification.	The Indian Ordnance and Medical Departments, and the Stores Department of the India Office are exempt from the rules in this column, provided that a written declaration of the contents of the package is given by a duly authorised officer, and that it is certified on the consignment note that the goods have been packed in accordance with the departmental regulations relating to the packing of such goods.	General packing regulations.	Supplementary packing, transport, loading and unloading regulations.	Special attention is drawn to rules 35 to 40 regarding the packing, marking, transport, loading and unloading, &c., of other dangerous goods. In cases of emergency, see rule 13.		
						Conditions under which and amount which may be carried.		
1	2	3	4	5	6	by GOODS train.	by MIXED or PASSENGER train.	7
	I.-INFLAMMABLE LIQUIDS. GROUP A. <i>Liquids, the vapours of which have flashing points below 76° Fahr. (subject to the proviso in section 2 (b) of the Indian Petroleum Act of 1899).</i>	R.R.O.N.						
	Bisulphide of carbon ...	10	(A) Packed in stoneware jars or glass-stoppered bottles standing upright in wooden cases					

By mixed train,
no restriction as
to quantity but
only carried when
no goods trains
are running.

Not carried by
passenger train.

NOTE—these goods
may also be car-
ried in steel
cylinders under
the regulations
contained in co-
lums 4, 5 and
6 of serial No.
63, in the rear
brake-van of mi-
xed or passenger
trains subject to
a limit of cylin-
ders per van.

The words "highly inflammable" must be distinctly marked on each package by the sender.

Collodion...	...	10	9	filled with chaff or saw-dust mixed with coal-dust, wood ashes, chalk or sand. A 10 per cent. vapour space to be left in each jar or bottle,	The words "highly inflammable" must be distinctly marked on each package by the sender.
Ether	...	9	8		
Petroleum ether (gasolene)	...	8	6		The words "highly inflammable" must be distinctly marked on each package by the sender.
Amyl alcohol	...	10	9	Amount limited to one jar or bottle per case.	
Fusel oil	...	10	9	(B) Packed in strong metal cans or drums provided with screw stoppers and caps soldered on. A 10 per cent. vapour space to be left in each drum.	The words "highly inflammable" must be distinctly marked on each package by the sender.
				Amount limited to 2 gallons per can and 75 gallons per drum.	
				Packed in strong metal drums and provided with screw stoppers and caps soldered on. A 10 per cent vapour space to be left in each drum.	The words "highly inflammable" must be distinctly marked on each package by the sender.
32 Ethyl chloride	...	01	9	Amount limited to 4 gallons in each drum.	

1	2	3	4	5	6	7
	1-INFLAMMABLE LIQUIDS.—(Contd.)	R.R.O.R.				
	GROUP A.—(Contd.)					
	<i>Liquids the vapours of which have flashing points below 76° Fahr. (subject to the proviso in section 2(b) of the Indian Petroleum Act of 1899.)</i>					
	Absolute alcohol ...	10	(A) Packed in stoneware jars or glass-stoppered bottles standing upright in wooden cases filled with chaff or saw dust mixed with coal dust, wood ashes, chalk or sand. A 10 per cent. vapour space to be left in each jar or bottle. Amount limited to one jar or bottle per case.	None of these articles shall be accepted unless sender produces a license; provided that a license shall not be required for quantities, not exceeding three gallons. In the case of all "petroleum" and other hydrocarbon oils, senders to declare on the consignment note whether the flashing point is below or at or above 76° Fahr. and the Railway staff to enter the same on the Receipt and Invoice.	No restriction as to quantity. Must be dispatched in thorough vehicles to destination or to junction at break of gauge,	By mixed train, no restriction as to quantity but only carried when no goods trains are running.
	Acetone ...	10	(B) Packed in strong metal cans or drums. A 10 per cent. vapour space to be left in each can or drum. Amounts limited to 2 gallons in each can and 150 gallons in each drum.			
	Alcohol denatured ...	6				
	Benzene ...	8	(i) The cans or drums containing the goods must be made of gas-tight tinned or galvanized sheet iron or steel plate and fitted with screwed filling holes and well fitting screw plug and in the case of drums, with outer cap soldered on, or with screw cap, or with other cap with metal gas-tight under disc.			
	Benzine (petrol) ...	8	(ii) The cans or drums must have the following thickness of metal :—			
	Benzol ...	8				
	Benzole ...	10				
	Benzoline ...	10				
	Butyl alcohol ...	10				
	Denatured spirit ordinary	6				
	Denatured spirit special	6				

Other commodities which are not explosives and not dangerous goods, may be loaded in the same vehicle with these liquids provided that they are well separated from them.

These liquids may be carried by brake-van of mixed or passenger train in cans or drums up to a limit of twelve gallons in one train. The cans or drums must be carried in the rear brake-van which should be well ventilated.

They must be placed as far as possible from other packages in the brake-van and from the rear tail light of the train.

Tanks of motor cars and motor cycles, when tendered for carriage should be examined to see that they are empty, thoroughly clean and free from vapour. The chief danger to be apprehended is from leakage, as the vapour of these goods is heavier than air and is inflammable. The vapour is also explosive when mixed with certain proportions of air in a confined space. Wagons containing these inflammable liquids should not be placed next to the engine or rear brakevan, but should be separated.

Industrial alcohol	...	6	4	Not less than.
Methyl alcohol	...	10	9	(1) When the capacity does not exceed 2 gallons... 26 B.W.G.
Methylated spirit	...	6	4	(2) When the capacity exceeds 2, but does not exceed 4 gallons ... 22 B.W.G.
Mhova spirit	...	6	4	(3) When the capacity exceeds 4, but does not exceed 30 gallons ... 18 B. W. G.
Motor car spirit	...	8	6	(4) When the capacity exceeds 30, but does not exceed 40 gallons ... 17 B. W. G.
Motor spirit ...	...	8	6	(5) When the capacity exceeds 40 but does not exceed 65 gallons ... 16 B. W. G.
Naphtha mineral	...	10	9	(6) When the capacity exceeds 65 but does not exceed 80 gallons ... 12 B. W. G.
roleum and other bon oils, dan-N. O. C.	...	10	9	(iii) The cans or drums must be so substantially constructed and secured as not to be liable except under circumstances of gross negligence or extraordinary accident to be broken or become defective, leaky or insecure in transit. A certificate must be entered on the consignment note by consignor to the effect that an air space of at least one tenth of its capacity was left in each can or drum at time of filling.
zine)	...	8	6	
alcohol ...	...	8	6	
alcohol mixture	...	8	6	
ine ...	...	8	6	
ed spirit...	...	10	9	
t of wine ...	...	6	4	
rit varnish ...	...	8	...	

1	2	3	4	5	6	7
	I.—INFLAMMABLE LIQUIDS—(Contd.) GROUP A—(Contd.) <i>Liquids, the vapours of which have flashing points below 76° Fahr., (subject to the proviso in section 2' (b) of the Indian Petroleum Act of 1899.</i>	R.R. OR	<p>(C) (1) In tank wagons of a design approved by the Railway Board and which must be in good condition and free from leakage when used for conveyance.</p> <p>(2) Tank wagons must have a label attached, printed in conspicuous characters bearing the words "highly inflammable" and stating the precise nature and name of the contents, and the names and addresses of the sender and consignee. Tank wagons must in no case be loaded beyond their weight carrying capacity.</p> <p>(3) Filling and emptying of tank wagons must be performed in day light.</p> <p>(4) Tank wagons must not be filled or emptied within 20 yards of a flame or furnace not at any place where the wagon is exposed to sparks.</p> <p>(5) In filling any tank wagon an air space must be left of not less than 10 per cent. of the total capacity of the tank.</p> <p>(6) The lid and all inlets and outlets of the tank (whether loaded or empty) must be properly secured and closed air tight.</p>	<p>rated therefrom by at least three wagons not loaded with explosives or other traffic of an inflammable nature. The words "highly inflammable" must be distinctly marked on each package by the sender. Cans or drums in a damaged condition must not be accepted. Empty cans or drums should only be accepted if they are securely closed with bungs, plugs or caps of either metal, wood or straw board and in the railway receipts granted to consignors the fact that the empties are all so closed should be stated.</p>		

34 Cements, compositions, paints polishes and other articles partly composed of naphtha or other highly inflammable liquids.

Must be packed in approved drums or receptacles of the pattern referred to above or in thoroughly strong and sound casks, not exceeding 50 gallons in capacity containing not less than 5 per cent of air space when filled, and securely closed so as to prevent leakage, in hermetically sealed tins or bottles packed in saw-dust in cases, or in securely closed tins, packed in saw-dust in cases, containing not more than $\frac{1}{2}$ gallon of liquid per package.

Must be packed in iron drums, or iron cans strongly made and securely closed so as to prevent leakage, or in hermetically sealed tins or air-tight collapsible tubes packed in saw-dust in cases, or in air-tight tins packed in saw-dust in a wooden box as an inner package, or air-tight collapsible tubes packed in saw-dust in stout card-board boxes or cartons as an inner package, each such inner package to contain not more than 1 lb. of rubber solution, and to be packed in an outer package made of

Senders to declare on the consignment note whether the flashing point is below, or at or above, 76° Fahr., and the railway staff to enter the same on railway receipt and invoice. The words "highly inflammable" must be distinctly marked on each package by the sender.

1	2	3	4	5	6	7
1	I.-INFLAMMABLE LIQUIDS. —(Contd.) GROUP A.—(Concl'd.) <i>Liquids, the vapours of which have flashing-points below 76° Fahr., (subject to the proviso in section 2 (b) of the Indian Petroleum Act of 1899.)</i>	R.R.O.R.				
35	Rubber solution composed of rubber and unphtha	10	wood, with sides not less than ½ inch thick; and ends ¾ inch thick strongly bound with hoop iron or crescent wire, and containing a total of not more than 10 lbs. of rubber solution, or in air-tight collapsible tubes, each containing not more than 1 fluid ounce of rubber solution, packed in sawdust in stout cardboard boxes or cartons as an inner package; each such inner package to contain not more than 1 lb. of rubber solution and to be packed in an outer package made of wood with sides not less than ½ inch thick, and ends ¾ inch thick, strongly bound with hoop iron or crescent wire, and containing a total of not more than 30 lbs. of rubber solution.		No restriction as to quantity.	By mixed train, no restriction as to quantity but only carried when no goods trains are running. Not carried by passenger train.

<p>36 Wood naphtha or wood spirit. ...</p>	<p>Group B. <i>Liquids, the vapours of which, have flashing points at 76° Fahr., and higher temperatures (subject to the proviso in section 2 (b) of the Indian Petroleum Act of 1899.)</i> Note—Lubricating oils having a flashing point at or above 200° Fahr., shall not be deemed to be dangerous goods for the purposes of this rule.</p>	<p>Must be packed in stoneware jars or glass-stoppered bottles or in vessels of tin or copper provided with screw stoppers or corked with caps, covering their mouths, soldered on.</p>	<p>The words "highly inflammable" must be distinctly marked on each package by the sender.</p>
<p>37 Cements, compositions, paints, polishes and other articles partly composed of naphtha or other inflammable liquids.</p>	<p>Must be packed in casks, iron drums or iron cans strongly made and securely closed so as to prevent leakage, or in hermetically sealed tins or bottles packed in saw-dust in cases, or in securely closed tins packed in saw-dust in cases containing not more than $\frac{1}{2}$ gallon of liquid per package.</p>	<p>The word "inflammable" must be distinctly marked on each package by the sender.</p>	<p>In the case of all "kerosine oils" and all "petroleum and other hydrocarbon oils," senders to declare on the</p>

1	2	3	4	5	6	7
	I.-INFLAMMABLE LIQUIDS.-(Contd.) GROUP B.-(Contd.) <i>Liquids, the vapours of which have flashing points at 76° Fahr., and higher temperatures (subject to the proviso in section 2 (b) of the Indian Petroleum Act of 1899.)</i>	R.R.O.R.		consignment note whether the flashing point is below, or at or above 76° Fahr., and the railway staff to enter the same on the railway receipt and invoice. "Kerosine or paraffin oil, non-dangerous" and "Petroleum and other hydro-carbon oils, non-dangerous" in quantities exceeding 500 gallons must not be accepted unless sender produces a special or general license. The word "inflammable" must be distinctly marked on each package by the sender.		By mixed train, no restriction as to quantity but only carried when no goods trains are running. <i>Note.</i> —For such time as, owing to the war, the present difficulty of obtaining materials from England lasts, "Kerosine oil, non-dangerous" may be carried in any quantity by mixed train even when goods trains are running). Not carried by passenger train.

SCHEDULE II.

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(*Note.* For such time, as owing to the war the present difficulty of obtaining materials from England lasts, one tank wagon or one wagon containing "Kerosine oil," non-dangerous, in tins may be attached to the rear brake-van of passenger trains. Except the tail lamp, no other lights must be allowed near the wagon and this rule must be strictly observed.)

No restriction as to quantity.

If, without outer wooden cases, a layer of *dunnage* matting or other suitable dunnage must be placed on the floor of the vehicle and between each tier of tins, and where the goods are transhipped from one vehicle to another, the matting or other dunnage originally used at the place of loading, must also be transhipped and properly laid down.

NOTE.—Over the E. B. Ry. bamboo mats used as dunnage for consignments of kerosine oil in tins (without outer wooden cases)

When not loaded in tank wagons specially constructed for the carriage of dangerous goods, must be securely packed, to prevent leakage, in iron or steel drums or in strong tins, or in bottles corked and sealed.

When bottles are used, they must be packed in straw or saw-dust and enclosed in wooden cases.

Liquid fuel provided it has a flash point at or above 150° Fahr., may also be carried in wooden casks.

Batching oil ...
Petroleum and other hydro-carbon oils, non-dangerous, Includes—...
Gas oil
Kerosine or paraffin oil, non-dangerous.
Liquid fuel

Rosin oils ...
Turpene ...

In the case of kerosine or paraffin oil, other commodities which are not explosive and not dangerous goods may be loaded in the same vehicle with these liquids provided that they are well separated from them.

Not carried by passenger train.

1	2	3	4	5	6	7
	I.—INFLAMMABLE.	R.R.O.R.				
	LIQUIDS.—Concd.					
	GROUP B.—Concd.					
	<i>Liquids the vapours of which have flashing points at 76° Fahr.; and higher temperatures subject to the proviso in section 2 (b) of the Indian Petroleum Act of 1899.</i>			<i>will be carried free of charge when returned to the original booking station, provided the original invoice particulars are quoted. The consignor must provide the damage in all cases.</i>		
					No restriction as to quantity.	By mixed train, no restriction as to quantity but only carried when no goods trains are running.
	Oil of turpentine ...	6	Must be packed either in iron or steel drum or tins properly soldered or in corked or cap-suled bottles, the bottles or tins being securely packed in wooden cases.	The word "inflammable" must be distinctly marked on each package by the sender.		
39	Spirits of turpentine ...	4				
	Terebine or sundryers...	9				
	Turpentine substitutes...	9			Other commodities, which are not explosives and not dangerous goods, may be loaded in the same vehicle with these liquids, provided that they are well separated from them.	
	Varnish... ..	6				Not carried by passenger train.

By mixed train,
no restriction as
to quantity; but
only carried when
no goods trains
are running.

No restriction
as to quantity.

Senders to de-
clare on the
consignment
note whether
the flashing
point is below,
or at or above,
76° Fahr. and
the railway
staff to enter
the same on
the railway
receipt and
invoice.

The word "in-
flammable"
must be dis-
tinctly marked
on each pack-
age by the
sender.

Must be packed in casks, iron
drums, or iron cans, strongly
made and securely closed so as
to prevent leakage, or
in hermetically sealed tins or
airtight collapsible tubes packed
in saw-tight tins packed in saw-
dust in a wooden box as an
inner package, or *air-tight*
collapsible tubes, packed in
saw-dust, in stout card-board
boxes or cartons as an inner
package, each such inner
package to contain not more
than 1 lb. of rubber solution,
and to be packed in an outer
package made of wood, with
sides not less than $\frac{1}{8}$ inch thick,
and ends $\frac{3}{4}$ inch thick strongly
bound with hoop iron or cres-
cent wire, and containing a
total of not more than 10 lbs.
of rubber solution, or
in air-tight collapsible tubes,
each containing not more than
1 fluid ounce of rubber solu-
tion, packed in saw-dust, in
stout card-board boxes or
cartons as an inner package,
each such inner package to
contain not more than 1 lb. of
rubber solution, and to be
packed in an outer package

4c Rubber solution composed
of rubber and naphtha ...

6...

1	2	3	4	5	6	7
II.-DANGEROUS, CORROSIVE AND POISONOUS CHE- MICALS.			R.R.O.R.			
41	Acid, fluoric or hydro- fluoric. ...	10	<p>made of wood with sides not less than $\frac{5}{8}$ inch thick, and end $\frac{7}{8}$ inch thick, strongly bound with hoop iron or crescent wire, and containing a total of not more than 30 lbs. of rubber solution.</p>	<p>The gross weight of each package must not exceed 2 maunds.</p>	<p>No restriction as to quantity.</p>	<p>By mixed train, no restriction as to quantity but only carried when no goods trains are running. By Brake-van of mixed or passenger train, one case only. It must be placed as far as possible from other packages in the brake-van.</p>
42	Acid, formic ...	10	<p>Must be packed in casks or in carboys. The carboys should be securely bunged or stoppered and luted. May also be carried in jars or bottles packed in cases.</p>			
			<p>Must be well secured in stone ware jars, or glass stoppered bottles, standing upright in cases; the inside packing of these cases must be of ashes, free from cinders, or of chalk, sand or dry earth.</p>			

The inside packing of the cases containing acid, hydrochloric or muriatic or spirit of salts may be of straw, or refuse cheap enough for packing such as grass, wood shavings, etc., and this acid may also be carried in glass or earthenware carboys of not more than 12 gallons capacity, packed securely in iron crates with straw, or refuse cheap enough for packing, such as grass, wood shavings, etc. The carboys should be securely bunged or stoppered and luted, with their necks exposed.

Note—Acid, hydrochloric or muriatic or spirit of salts in glass carboys of not more than 12 gallons capacity may however be packed in wooden crates or wicker hampers as a temporary measure during the period of the war.

Must be well secured in stone-ware jars, or glass stoppered bottles, standing upright in cases; the inside packing of these cases must be of ashes, free from cinders, or of chalk sand or dry earth.

42 Acid, hydrochloric or muriatic or spirit of salts

43 Acid nitric or aqua fortis

No restriction as to quantity.

The gross weight of each package must not exceed 2 maunds.

Bottles containing "Acid hydrochloric or muriatic or spirit of salts" or "acid, nitric or aqua fortis" must be only three-fourths full to allow for expansion of vapour.

By mixed train, no restriction as to quantity but only carried when no goods trains are running.

By brakevan of mixed or passenger train, one case only. It must be placed as far as possible from other packages in the brake-van.

Note—In the case of Government consignments more than one case may be so carried, provided that the gross weight of the cases does not exceed two mds.

1	2	3	4	5	6	7
	II.-DANGEROUS, CORROSIVE AND POISONOUS CHEMICALS. (Contd.)					
44	Muriatic or chloride of zinc	4	In casks or iron drums or carboys. May also be carried in jars or bottles packed in cases.	.....	
45	Acid, acetic	8	Must be well secured in stoneware jars, or glass-stoppered bottles, standing upright in cases; the inside packing of these cases must be of straw, chaff, or saw-dust mixed with coal, woodashes, chalk or sand.	The gross weight of each package must not exceed 2 maunds. Bottles containing "Bromine" or "ammonia in solution" must be only three-fourths full to allow for expansion of vapour.		
	Acid carbolic	8				
	Acid, cresylic	10				
	Amorphous phosphorus	10				
	Bromine	10				
	Chloride of sulphur	10				
46	Perchloride of iron	8	Must be put into metal bottles with caps soldered on, standing upright in cases. The inside packing must be of straw, chaff, or saw-dust mixed with coal, wood ashes, chalk or sand.			
	Phosphorus	10				
46	Ammonia in solution	10				
47	Acid, phosphoric	8	In casks ...	.....	
	Acid, sulphurous (solution)	10				
			(f) Must be well secured in stoneware jars or glass stoppered bottles standing upright in cases, and the inside pack-			

<p>48 Acid, sulphuric, or oil of vitriol or vitriol ...</p>	<p>8</p>	<p>ing of these cases must be of ashes, free from cinders, or of chalk, sand, or dry earth. In the case of Sulphuric acid, diluted with, not less than twice its volume of water of a specific gravity of 1.250 or below which must be certified in writing by the consignor, that the inside packing of the cases containing such acid may be straw, or refuse cheap enough for packing such as grass, wood shavings, etc., instead of ashes free from cinders or chalk, sand, or dry earth. (ii) May also be carried in glass or earthenware carboys of not more than 12 gallons capacity, packed securely in iron crates with straw, or refuse cheap enough for packing, such, as grass wood shavings, etc. May also be carried in earthenware jars or carboys of less than 12 gallons capacity, firmly packed in straw in wooden racks fixed in the wagons. The carboys should be securely bunged or stoppered and luted, with their rocks exposed.</p> <p><i>Note.</i>—Glass carboys of not more than 12 gallons capacity may however be packed in wooden crates or wicker work hampers</p>
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No restriction as to quantity.

By mixed train, no restriction as to quantity but only carried when no goods trains are running.

By brake van of mixed or passenger train, one case only. It must be placed as far as possible from other packages in the brake-van.

Note.—Serial Nos. 45 and 48. In the case of Government consignments more than one case may be so carried, provided that the gross weight of the cases does not exceed two mds.

The weight of each case when packed in accordance with clause (i) or (ii) of column (4), must not exceed 2½ mds, but when packed in accordance with clause (iii), the net weight of the acid must not exceed 112 lbs. When packed in accordance with clause (v), the weight of each package must not exceed 450 lbs.

1	2	3	4	5	6	7
	<p>II-DANGEROUS, CO- EROSIVE AND POISONOUS CHEMICALS.-(Contd.)</p>	<p>R.R.O.R</p>	<p>as a temporary measure during the period of the war. (Contd.)</p> <p>(iii) May also be packed in hermetically sealed cisterns made of lead weighing 5 lbs. per square foot, enclosed in wooden cases made of one inch thick boards bound with half-inch hoop-iron, the sides of the case being so constructed that the grain runs horizontally on two sides and vertically on the other two.</p> <p>(iv) Must not be put into jars with cork or wooden stoppers.</p> <p>(v) Acid, sulphuric, concentrated, i.e., of a specific gravity not less than 1.84 which must be certified in writing by the consignor, may be packed in strong hermetically sealed iron or steel drums which must be in good condition and free from rust.</p> <p>(vi) May also be carried in tank wagons of an approved design and of a carrying capacity not exceeding 20 tons.</p>			

49 Arsenic	...	6	...	<p>{ Must be packed in cases, casks or iron drums, and must not be carried in bags. May also be carried in jars or bottles packed in cases.</p>	<p>The word "Poison" must be distinctly marked on each package by the sender.</p>	<p>No restriction as to quantity.</p>	<p>By mixed train, no restriction as to quantity but only carried when no goods trains are running. May be despatched by brake-van of mixed or passenger train in any quantity at any time, if desired.</p>
50 Disulphite of lime solution saturated with sulphur dioxide gas	...	4	...	<p>Must be packed in casks or in glass bottles (not earboys) packed in cases or hampers.</p>	<p>The gross weight of each package must not exceed 2 maunds.</p>	<p>The cases, casks, or iron drums must not be loaded with other goods liable to be damaged thereby (such as foodstuffs, textile fabrics, leather and rubber goods) or with inflammable liquids.</p>	<p>By mixed train, no restriction as to quantity but only carried when no goods trains are running.</p>
51 Chloroform	...	8	...	<p>Must be packed in strong airtight iron drums or in bottles packed in saw-dust in cases.</p>	<p>Chlorates must not be loaded in the same vehicle with combustible materials, with sugar or sulphur, or with sulphuric acid</p>	<p>No restriction as to quantity.</p>	<p>By brake-van of mixed or passenger train, one case only. It must be placed as far as possible from other packages in the brake-van.</p>
Chlorate of barium	...	10	9	<p>Must be packed in iron drums or paperlined casks, of sufficient strength not to allow any of their contents to escape through wear and tear of transport.</p>			
Chlorate of potash	...	10	9	<p>May also be carried in jars or bottles packed in cases.</p>			
rate of soda...	...	10	9				

1	2	3	4	5	6	7
	II.—DANGEROUS, CORROBIVE AND POISONOUS CHE- MICALS.—(Contd.)	REGD.				
53	Nitrate of barium ...	10	Must be packed in cases, casks, or iron drums, and must not be carried in bags.	(vitriol or oil of vitriol) hydro- chloric acid (muriatic acid or spirit of salts) or nitric acid (aquafor- tis.)		
	Nitrate of lead ...	10				
	Nitrate of iron ...	10				
51	Nitrate of soda [other than natures] ...	2	Must be packed in bags or bottles packed in cases, or in this packed in cases, May also be carried in jars or bottles packed in cases.	.....	
	Muriate of tin or tin liquor ...	10	Must be packed in casks or iron drums, May also be carried in jars or bottles packed in cases.	.....	
55	Potassium ...	10	Must be packed in iron drums hermetically sealed. Any quan- tities under four pounds for chemical purposes, may also be packed in mineral oil in stop- pered bottles contained in tin cans.	.....	

By mixed train,
no restriction as
to quantity but
only carried when
no goods trains
are running.

57	Sodium ...	...	10	9	Must be packed in iron drums enclosed in strong wooden cases, or in approved air-tight and water-tight iron drums, packed in strong wooden cases, also in approved steel cases, each containing not more than 3 cwt., of sodium, closed with air-tight locked lever-lids. Any quantity under four pounds, for chemical purposes, may also be packed in mineral oil in stoppered bottles contained in tin cases.	.....	No restriction as to quantity.	By brake-van of mixed or passenger train, one case only. It must be placed as far as possible from other packages in the brake-van.
58	Oxalic acid	...	6	...	Must be packed in cases or casks May also be carried in jars or bottles packed in cases.	The word "poison" must be distinctly marked on each package by the sender.	No restriction as to quantity.	By brake-van of mixed or passenger train, one case only. It must be placed as far as possible from other packages in the brake-van.
59	Nitrate of potash, nitre or saltpetre [other than manures].	...	2	...	Must be packed in bags or casks May also be carried in jars or bottles packed in cases.	.....	Other commodities, which are not explosives and not dangerous goods, may be loaded in the same vehicle with nitrate of potash, nitre or saltpetre (other than manures) provided that they are well separated from it.	By brake-van of mixed or passenger train, one case only. It must be placed as far as possible from other packages in the brake-van.

1	2	3	4	5	6	7
R.I.O.R.	II-DANGEROUS, CORROSIVE AND POISONOUS CHE- MICALS.-(<i>Contd.</i>)			Aniline salt is poisonous, it also stains pipe wood and some kinds of paper yellow and gives off vapours which produce a similar effect. Packages con- taining this chemical must, therefore be kept quite a- part from other goods includ- ing articles of food, and if any leakage from a pack- age should oc- cur steps must at once be taken to re- move from the vicinity all ar- ticles which might be da- maged by the substance or its vapour.	No restriction as to quan- tity.	By mixed train, no restriction as to quantity but only carried when no goods trains are run- ning.
60	Aniline salt (aniline hy- dro-chloride)	8	{ In thoroughly sound casks or cases of sufficient strength to withstand rough usage. May also be packed in jars or bottles in cases.			Not carried by passenger train.

MISCELLANEOUS DANGEROUS ARTICLES.

61 Acetylene, compressed into porous substances; subject to the conditions specified in the Government of India, Department of commerce and Industry, Notification No. 596, D, dated the 6th December 1919, vide Appendix VI.

Must be packed in steel cylinders contained (i) in a crate in such a manner that the label is plainly visible, or (ii) in a covering made of closely plaited 1 inch (circumference) hemp or coir to which an additional metal label marked as directed in column 5, is attached by wire, or rivets or (iii) in a strong wooden case with additional metal label marked, as directed in column 5 on the outside thereof.

Every cylinder shall have permanently and conspicuously marked upon it or upon a brass plate soldered to it the name of the manufacturer and the words "Acetylene compressed into porous substance exempted by the notification of the Government of India in the Department of Commerce and Industry, No. 596/D, dated the 6th December 1919"; and every cylinder shall bear a label giving the date when it was last charged together with the name of

By mixed train, no restriction as to quantity but only carried when no goods trains are running. Not carried by passenger train.

No restriction as to quantity.

1	2	3	4	5	6	7
	III.-MISCELLANEOUS DANGEROUS ARTICLES.-(Contd.)	R.R.O.R		<p>the firm by which it was charged, the address of the last charging station and the maximum pressure allowed in the cylinder. Every cylinder capable when empty of containing one cubic foot of water or more and manufactured after the date of this notification shall have stamped upon it the name or the trade mark of the manufacturer and the serial number of the cylinder.</p>		

Must be packed in hermetically closed metal drums or metal cases sufficiently strong to remain in that condition through ordinary wear and tear of transport, so that the contents cannot be affected by air or moisture.	There must be no copper in the composition of any drum or case containing these chemicals.	The label on each hermetically closed metal drum or metal case must bear in conspicuous characters the words " <i>Dangerous if not kept dry</i> " and with the following caution: <i>"The contents of this drum (or case) are liable if brought into contact with moisture, to give off a highly inflammable gas."</i>	The name and address of the sender should also be labelled on each drum or case.	No drum or case must contain a quantity exceeding 224 lb These chemicals while in the possession of a railway for transport, must be stacked in the open under water-proof sheets and so placed as to prevent their getting wet. If any carbide of calcium becomes wetted while in the possession of a Railway for transport it shall be destroyed by immersion in deep water, if, however, deep water is not available, the wet carbide of calcium shall be spread out in the open in an isolated posi-
62 { Carbide of calcium Calcium phosphide	... 6 ...	4 ...		

1	2	3	4	5	6	7
	III.—MISCELLANEOUS DANGEROUS ARTICLES.—(Contd.)	R.R.O.R.		tion, all precautions being taken to prevent lights, being brought near until the material has given off all its gas.	No restriction as to quantity.	By mixed train, no restriction as to quantity, but only carried when no goods trains are running.
				NOTE.—The fact of carbide of calcium having been used, it will be indicated by the occurrence of the odor of the acetylene of the lamp or case and probably by a disagreeable odor showing a leakage of gas.		By Brake-van of mixed or passenger train, subject to a limit of 450 lbs. per train.
				Vehicles used for the carriage of these chemicals must be thoroughly ventilated and rendered impervious to rain.		The drums or cases must be placed as far as possible from other packages in the brake-van.

(a) These gases must be packed in cylinders.	(b) Cylinders must be made of wrought iron or mild steel of the best quality and must comply in every other respect with the recommendations made by the Departmental Committee on compressed gas cylinders appointed by the Secretary of State for the Home Department in England in 1895, and must not exceed 8 feet in length and 10 inches in diameter.	Special attention is directed to the extract from the recommendations of the Departmental Committee, printed as Appendix VII to these rules.	(c) Cylinders must be separately and securely packed in a strong wooden case or in a covering made of closely plaited 1 inch (circumference) hemp or coir, except that—	(d) Several small cylinders not exceeding 24 inches in length and 4 inches in diameter may be packed in one box, provided that each cylinder is contained in "separate compartment or is separately encased in closely plaited 1 inch (circumference) hemp or coir. Each
Ammonia anhydrous liquefied	10	9		
Ammonia gas, compressed	10	9		
Compressed, atmospheric air	10	9		
Compressed, or liquefied carbonic acid gas (carbon dioxide)	4			
Compressed, coal gas ...	10	9		
Nitrous oxide gas compressed or liquefied	10	9		
Compressed or liquefied sulphurous acid gas (sulphur dioxide). ...	10	9		
Hydrogen gas compressed	10	9		
Oxygen gas compressed	10	9		

SCHEDULE II.

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Ferro-silicon 30 per cent. and under; 65 per cent. and over Ferro-silicon between 30 per cent. and 65 per cent.	10	In casks, cases, or bags In casks, or cases, perforated with one inch holes.	(1) Must not be conveyed in closed trucks or box wagons. (2) The grade of ferro-silicon must be stated on the consignment note. (3) Ferro-silicon between 30 per cent. and 65 per cent. must not be accepted in casks or cases, unless the casks or cases are perforated with not less than 4 one inch holes, and ferro-silicon (all grades) must not be accepted in iron drums.	No restriction as to quantity.	By mixed train, no restriction as to quantity but only carried when no goods trains are running.
65 Zinc dust or tutty powder	8	In air-tight and damp proof casks or cases.	Must not be accepted for conveyance when packed in bags.		Not carried by passenger train.
Matches, safety Matches, non-safety	9	(1) Must be packed in strong dust-tight wooden cases which in the case of matches non-safety, must have a metal lining.			

1	2	3	4	5	6	7
	<p>III.—MISCELLANEOUS DANGEROUS ARTICLES—(Concd.)</p> <p>NOTE.—Matches which ignite by simple friction and frugal lights which, while not ordinarily igniting by simple friction, are capable of doing so under chemical decomposition and are liable to spontaneous combustion should be considered as coming within the class "Matches, non-safety," while those which require to be rubbed on the prepared surface of the box which contains them to be ignited should be considered as coming within the class "Matches, safety."</p>	<p>R.R.O.R.</p>	<p>(2) The outer wooden cases used for the carriage of matches shall be of the following thickness of wood; if gross weight of case with contents does not exceed 4 maunds in weight, $\frac{3}{4}$ inch thick throughout; if gross weight of case with contents exceeds 4 maunds, $\frac{7}{8}$ inch thick throughout.</p> <p>(3) Matches, safety may, however, be carried in the tins in which they are imported, provided that such tins are strong enough as outer packages, that they do not exceed a limit in size of 2' x 1' x 1' weighing approximately 13½ seers and do not contain more than 120 packets of "Matches, safety."</p>	<p>.....</p>	<p>No restriction as to quantity.</p>	<p>By mixed train, no restriction as to quantity but only carried when no goods trains are running.</p>
	<p>Only carried if packed in metal drums.</p>			<p>.....</p>	<p>No restriction as to quantity.</p>	<p>In the case of matches, safety, other commodities which are not explosives and not dangerous goods, may be loaded in the same vehicle, provided that they are well separated from them.</p>
	<p>Not carried by passenger train.</p>					
	<p>By mixed train, no restriction as to quantity but only carried when no goods trains are running.</p>					

APPENDIX I.

Consignment note for Dangerous, Explosive and Combustible articles.

To the _____ Railway Administration Station.
 Company
 Dated _____ 19 .

The _____ Railway Administration Company are requested to receive
 for despatch to _____ Station on the _____ Railway the
 following packages consigned to _____ of _____
 containing the dangerous, explosive or combustible articles which are specified
 below, and I hereby declare that the contents of the packages are known to me,
 that the conditions laid down in the General Rules sanctioned by the Governor-
 Général in Council for the packing and carriage of dangerous, explosive and
 combustible articles have been complied with and that the actual weight of the
 article contained in each separate package or case is entered herein. *I also declare*
that the original certificate signed by _____ *which now accompanies this*
the true copy of the consignment refers to samples of the _____ forwarded under this Consi-
 gnment Note:—

By whom consigned.	To whom consigned.	Station and address.	No. of articles.	Description and marks.	Sender's weight.		Carriage to be paid by.
					Maunds.	Seers.	

NOTE.—The words printed in italics should be scored out where they are not required,

I do hereby certify that I have satisfied myself that the description, marks and weight or quantity of goods consigned by me have been correctly entered in this Consignment Note.

(Space for printing foregoing certificate in the necessary vernaculars.)

Signature of Sender or Deliverer of Goods _____

Address _____

Date - - - _____

The attention of the Sender or Deliverer of the goods is invited to the principal terms and conditions applying to the carriage of goods by railway, which are set forth in Public Notice on the back of this document.

No alteration is to be made in the above entries after this Consignment Note has been signed by the Consignor.

NOTICE TO CONSIGNORS.

The _____ Administration
Company hereby gives public notice:—

1. That the Railway Administration
Company will not be accountable for any articles unless the same are booked and a receipt for them given by their clerk or agent, and that when the articles are so accepted for conveyance, the responsibility of the Railway for the loss, destruction or deterioration of the articles is subject to the provisions of section 72 of the Indian Railways Act, IX of 1890.

2. That the railway receipt given by the Railway Administration
Company for the articles delivered for conveyance must be given up at destination by the consignee to the Railway Administration
Company, otherwise the Railway may refuse to deliver, and that the signature of the consignee or his agent in the delivery book at destination shall be evidence of complete delivery.

If the consignee does not himself attend to take delivery, he must endorse on the receipt a request for delivery to the person to whom he wishes it made, and if the receipt is not produced, the delivery of the goods may, at the discretion of the Railway Administration
Company, be withheld until the person entitled in its opinion to receive them has given an indemnity to the satisfaction of the Railway Administration
Company.

3. That all claims against the Railway Administration
Company for loss or damage to goods must be made to the clerk in charge of the station to which they have been booked before delivery is taken, and that a written statement of the description and contents of the articles missing, or of the damage received, must be sent forthwith to the Traffic Superintendent of the district in which the forwarding or receiving station is situated; otherwise, the Railway Administration
Company will be freed from responsibility.

4. That by section 77 of the Indian Railways Act, IX of 1890, it is enacted that a person shall not be entitled to a refund of an over-charge in respect of animals or goods carried by railway, or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the Railway Administration
Company within six months from the date of the delivery of the animals or goods for carriage by railway.

5. That the Railway Administration
Company have the right of re-measurement, re-weighment, re-classification and re-calculation of rates, terminals and other charges

at the place of destination, and of collecting, before the goods are delivered, any amount that may have been omitted or under-charged.

6. That subject to any exceptions from time to time notified by the Railway Administration
Company, the freight on dangerous, explosive and combustible articles must be prepaid, and that by section 55 of the Indian Railways Act, IX of 1890, it is enacted that if a person fails to pay on demand made by or on behalf of a Railway Administration
Company any rate, terminal or other charge due from him in respect of any animals or goods, the Railway Administration
Company may detain the whole or any of the animals or goods, or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into its possession.

7. That all goods left on the Railway Administration's
Company's premises are liable to wharfage and demurrage charges as per Goods Tariff, and these charges will also be levied on goods left on hand, pending payment of freight and charges due on them.

8. That goods booked to stations on the _____ Railway or Railways worked by the _____ Railway are carried subject to the rules and conditions printed from time to time in the Railway Administration's
Company's Goods Tariff; and goods booked to or over a foreign Railway are subject to the rules and regulations and to wharfage and other charges in force on such Railway.

9. That by section 106 of the Indian Railways Act, IX of 1890, it is enacted that if a person requested under section 58 to give an account with respect to any goods, gives an account which is materially false, he, and, if he is not the owner of the goods, the owner also, shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

10. That by section 107 of the Indian Railways Act, IX of 1890, it is enacted that if, in contravention of section 59, a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway.

Head-Quarter Office,

Date _____

Printed name and designation of
Railway Officer.

APPENDIX II

RISK NOTE, FORMS D. & G. (vide Appendix C.)

APPENDIX III.

Certificate for compressed gases.

Certified that the cylinder
cylinders containing _____ tendered by me
us
as per Forwarding Order No. _____ of this date to the _____ Rail-
way for despatch to _____ Station has
have been packed and tested in
accordance, and that the cylinder complies
cylinders comply in every other respect, with the rules
promulgated in Chapter III, Part II of the General Rules for working open lines
of railway.

Signature of sender
senders,

APPENDIX IV.

Certificate by the Inspector of Explosives (or by the Government
Chemical Examiner or Analyser, at the time the explosives are
imported), or by the Ordnance Officer in the case of Ordnance consi-
gnments, certifying the safety for transport of explosives of groups
III and IV.

I hereby certify that the (*here specify the description of explosives*) stored in
Messrs. _____ magazines at _____ has been
duly examined and that the same is of standard purity and in the case of
dynamite or any nitro glycerine compound, shows no signs of exuded nitro-
glycerine or of liquefaction. It is in perfect physical and chemical condition for
transport by rail, ship, boat, cart, coolies or any other ordinary means of transport.

Chief Inspector of Explosives, India, or
Inspector of Explosives, or
Government Chemical Examiner or Analyser, or
Ordnance Officer.

Station _____,

19 .

N. B.—The above certificate shall ordinarily be valid for six months after
date, provided that in the case of dynamite and other nitro-glycerine compounds,
which are not used as propellants as defined in rule 16 of the Regulations
applicable to explosives;

- (a) such certificate shall lapse on the 31st July, and
- (b) a fresh certificate for each conveyance must be demanded by the
Railway Administration concerned during the period from the 1st
April to the 31st July (both inclusive), if the original certificate
not been granted later than the 31st March,

APPENDIX VI.

APPENDIX V.

Picric Acid.

- (a) Picric acid or a picrate when mixed with not less than one half its own weight of water shall not be deemed to be an explosive.
- (b) Picric acid when thoroughly mixed with not less than three times its own weight of—
- (i) anhydrous sulphate of soda, or
 - (ii) crystallised sulphate of soda, and packed in hermetically closed packages, or
 - (iii) potash alum,
- shall not be deemed to be an explosive.

Di-nitro-phenol, dry.

Nothing in the Indian Explosives Rules, 1914, shall apply to the possession, sale, transport and importation of Di-nitro-phenol, when packed in water tight packages and mixed with water in the proportion of 85 parts by weight of Di-nitro-phenol to not less than 15 parts by weight of water.

APPENDIX VI.

Acetylene.

No. 596-D.

GOVERNMENT OF INDIA.

DEPARTMENT OF COMMERCE AND INDUSTRY.

NOTIFICATION.

Explosives.

Delhi, the 6th December 1919.

In exercise of the powers conferred by sections 17 and 6 of the Indian Explosives Act, 1884 (IV of 1884), and in supersession of the notification of the Government of India in the Department of Commerce and Industry, No 706-39, dated the 30th January 1915:—

1. The Governor General in Council is pleased hereby to declare that acetylene, when liquid or when subject to a pressure above that of the atmosphere capable of supporting a column of water exceeding two hundred and fifty inches in height, and whether or not in admixture with other substances, or when in admixture with atmospheric air or with oxygen gas in whatever proportion and at whatever pressure, and whether or not in admixture with other substances, shall be deemed to be an explosive within the meaning of the said Act, subject to the following exception that if it be shown to the satisfaction of the Governor General in Council that acetylene declared to be an explosive by this notification

when in admixture with any substance, or in any form or condition, is not possessed of explosive properties, the Governor General in Council may, by order, exempt such acetylene from being deemed to be an explosive within the meaning of the said Act.

Provided that nothing in this notification shall apply to acetylene in admixture with air when such admixture takes place only in a burner or contrivance in which the mixture is intended to be burnt:

Provided also, that nothing in this notification shall be held to apply to an admixture of acetylene and air which may unavoidably occur in the first use or recharging of an apparatus properly designed and constructed with a view to the production of pure acetylene:

Provided also, that acetylene, when in admixture with oil-gas (that is to say, a gas manufactured from mineral oil), shall not when under compression be deemed to be an explosive within the meaning of the said Act, if the following conditions are fulfilled, namely:—

- (1) The acetylene shall be generated only by the Atkins Dry Process.
- (2) The proportion of acetylene shall not exceed fifty parts by volume in every one hundred parts of the mixture of acetylene and oil-gas.
- (3) The acetylene and oil-gas shall be mixed together in a chamber or vessel before the gases are subjected to compression.
- (4) The mixture shall not be compressed to a pressure exceeding one hundred and fifty pounds to one square inch:

Provided also, that acetylene when contained in a homogeneous porous substance with or without acetone or other solvent, shall not be deemed to be an explosive within the meaning of the said Act, if the following conditions are fulfilled, namely:—

- (1) The porous substance shall fill as completely as possible the cylinder into which the acetylene is compressed.
- (2) The porosity of the substance shall not exceed eighty per cent.
- (3) Any acetone or other solvent used shall not be capable of chemical reaction with the acetylene gas or with the porous substance or with the metal of the cylinder, and the quantity of acetone or other solvent shall be such that when fully charged with acetylene it shall not completely fill the porosity of the porous substance at any temperature likely to be met with in ordinary practice or use.
- (4) A drawing showing the method of construction of every type of cylinder it is proposed to use for the storage of compressed acetylene shall be deposited with the Chief Inspector of Explosives with

Government of India and no cylinder shall be so used unless it is of a design approved in writing by the said Chief Inspector;

Provided that this shall not be deemed to prohibit the use of existing cylinders for a period of five years from the date of this notification.

- (5) The pressure in the cylinders shall not exceed two hundred and twenty-five pounds to the square inch at a temperature of sixty degrees Fahrenheit:

Provided that no cylinder capable when empty of containing one cubic foot of water or more, which has the ends secured to the body by welding only, and no cylinder in which a porous substance is used without acetone or other solvent shall be charged to a pressure exceeding one hundred and fifty pounds to the square inch at a temperature of sixty degrees Fahrenheit. This condition shall not apply to cylinders used exclusively for marine lighting by an officer appointed by a local Government in that behalf.

- (6) Every cylinder capable when empty of containing one cubic foot of water or more in which under this notification the pressure allowed may be two hundred and twenty-five pounds to the square inch, shall be annealed and every cylinder shall be tested by hydraulic pressure to a pressure of not less than four times the pressure to which the cylinder is to be subjected in use, such hydraulic pressure to be maintained for a period of not less than fifteen minutes and no cylinder shall be used which on the first occasion of its being subjected to this test shall show any permanent stretch.

- (7) The compression of the acetylene shall be carried out only on such premises as shall have been approved in writing by the Chief Inspector of Explosives, with the Government of India. Such approval may be withdrawn at any time by that officer.

- (8) No firm shall charge with acetylene any cylinder manufactured by any other firm unless it is in full possession of full particulars and previous history of such cylinder or has otherwise assured itself that the cylinder complies with the requirements of this notification.

- (9) Whenever a cylinder is charged with acetylene it shall be subjected to a thorough visual examination if the history of the cylinder shows that it has not been subjected to such an examination within the previous twelve months and at the same time the valve shall be removed and the condition of the porous substance at the neck of the cylinder ascertained.

- (10) Every cylinder shall have permanently and conspicuously marked upon it or upon a brass plate soldered to it the name of the manufacturer and the words "Acetylene compressed into porous substance exemp-

ted by the notification of the Government of India in the Department of Commerce and Industry, No. 596-D., dated the 6th December 1919"; and every cylinder shall bear a label giving the date when it was last charged together with the name of the firm by which it was charged, the address of the last charging station and the maximum pressure allowed in the cylinder. Every cylinder capable when empty of containing one cubic foot of water or more and manufactured after the date of this notification shall have stamped upon it the name or the trade mark of the manufacturer and the serial number of the cylinder.

(11) Each charging firm shall keep a record of every cylinder charged by it. This record shall give the following information, namely;—

- (a) the date of each charging of the cylinder;
- (b) the dates upon which solvent has been added;
- (c) the dates upon which the cylinder has been thoroughly examined as provided in condition (9), the result of each such examination, and the name of the person carrying out such examination; and

in the case of cylinders first issued by the firm, the tare weight of the cylinder including porous substance and acetone or other solvent, the nature of the solvent, and the maximum pressure allowed in the cylinder.

The record shall be open to the inspection of the Chief Inspector of Explosives and Inspectors of Explosives with the Government of India.

(12) Every facility shall be given to the Chief Inspector of Explosives and Inspectors of Explosives with the Government of India to inspect the apparatus and methods by which the cylinders are charged.

11. The Governor General in Council is pleased to prohibit absolutely the manufacture, possession and importation of such acetylene as is declared by paragraph 1 of this notification to be an explosive.

A. H. LEY;

Secretary to the Government of India.

APPENDIX VII

Summary of recommendations of the Departmental Committee on compressed gas cylinders appointed by the Secretary of State for the Home department in England in 1895.

I.—CYLINDERS OF COMPRESSED GAS (OXYGEN, HYDROGEN, OR COAL GAS.

(a) *Lap-welded wrought iron*.—Greatest working pressure, 120 or 1,800 lbs. per square inch.

Stress due to working pressure not to exceed $6\frac{1}{2}$ tons per square

Proof pressure in hydraulic test, after annealing, 224 atmospheres, or 3,360 lbs. per square inch.

Permanent stretch in hydraulic test not to exceed 10 per cent. of the elastic stretch.

One cylinder in 50 to be subjected to a statical bending test, and to stand crushing nearly flat between two rounded knife edges without cracking.

(b) *Lap-welded or seamless steel*.—Greatest working pressure, 120 atmospheres, or 1,800 lbs. per square inch.

Stress due to working pressure not to exceed $7\frac{1}{2}$ tons per square inch in lap-welded, or 8 tons per square inch in seamless cylinders.

Carbon in steel not to exceed 0.25 per cent, or iron to be less than 99 per cent.

Tenacity of steel not to be less than 26 or more than 33 tons per square inch. Ultimate elongation not less than 1.2 inches in 8 inches. Test bar to be cut from finished annealed cylinder.

Proof pressure in hydraulic test, after annealing, 224 atmospheres, or 3,360 lbs. per square inch.

Permanent stretch shown by water jacket not to exceed 10 per cent. of elastic stretch.

One cylinder in 50 to be subjected to a statical bending test and to stand crushing nearly flat between rounded knife edges without cracking.

Regulations applicable to all cylinders.

Cylinders to be marked with a rotation number, a manufacturer's or owner's mark, an annealing mark with date, a test mark with date. The marks to be permanent and easily visible.

Testing to be repeated at least every two years, and annealing at least every four years.

A record to be kept of all tests.

Cylinders which fail in testing to be destroyed or rendered useless.

Hydrogen and coal gas cylinders to have left-handed threads for attaching connections, and to be painted red.

The compressing apparatus to have two pressure gauges and an automatic arrangement for preventing overcharging. The compressing apparatus for oxygen to be wholly distinct and unconnected with the compressing apparatus for hydrogen and coal gas.

Cylinders not to be refilled till they have been emptied.

If cylinders are sent out unpacked the valve fittings should be protected by a steel cap.

A minimum weight to be fixed for each size of cylinder in accordance with its required thickness. Cylinders of less weight to be rejected.

APPENDIX C.

**Rules for the Warehousing & Retention of goods, under S. 47 (1) (f).
PUBLIC WORKS DEPARTMENT (RAILWAY),**

Bombay Castle, 9th July 1902.

No. 27.—The following Notification by the Government of India in the Public Works Department is republished for information:—

Simla, the 3rd July 1902.

No. 231.—In exercise of the power conferred by section 47, sub-section (3), of the Indian Railways Act, 1890 (IX of 1890), the Governor General in Council is pleased to sanction the following rules, made for and to be applicable to all railways in British India under sub-section (1), clause (f) of the said section, for regulating the terms and conditions on which railway administrations will warehouse or retain goods at any station or depot on behalf of the consignee or owner, namely :

I.—Wharfage.

ON GOODS FOR DESPATCH WAITING TO BE CONSIGNED.

1. For goods of every description brought on to railway premises for despatch but not consigned wharfage may be charged at a rate not exceeding one anna per maund or part of a maund per day or part of a day if consignment notes are not received before closing time of the day on which such goods are brought to the station.

2. Goods will, in all cases, be at owner's risk until taken over by the railway administration for despatch and a receipt in the prescribed form has been granted duly signed by an authorised railway servant.

ON GOODS AVAILABLE FOR DELIVERY.

3. (1) A wharfage charge may be levied in respect of all goods not removed from Railway premises before closing time of the day following that on which they are made available for delivery.

(2) The charge referred to in sub-rule (1) shall not exceed, per day or part of a day, one anna per maund or part of a maund, calculated—

(a) where freight is levied on weight, upon such weight; and

(b) where freight is levied on the vehicle in or on which the goods are carried, upon the carrying capacity of such vehicle.

(3) The goods shall be warehoused either under cover or in the open as space may be available.

ON LUGGAGE AND PARCELS AVAILABLE FOR DELIVERY.

4. For unclaimed booked luggage and parcels a wharfage charge not exceeding two annas per maund or part of a maund per 24 hours or part of 24

with a minimum charge as for one maund, may be made if they are not removed from railway premises within 48 hours from midnight of the day of arrival.

NOTICE OF ARRIVAL.

5. Subject to the provisions of section 56 of the Indian Railways Act, 1890 (IX of 1890), notice of arrival will be sent when practicable, but the railway administration will accept no responsibility for non-receipt thereof.

II.—Demurrage.

ON VEHICLES ORDERED AND WAITING TO BE LOADED BY SENDERS.

6. Demurrage at a rate not exceeding one anna per ton or part of a ton of carrying capacity per hour or part of an hour may be charged on all vehicles ordered and not loaded, or loaded and not made available for despatch, after the expiry of nine hours of daylight from the time at which they are placed in position for the purpose.

ON LOADED VEHICLES WAITING TO BE DISCHARGED BY CONSIGNEES.

7. Demurrage at a rate not exceeding one anna per ton or part of a ton of carrying capacity per hour or part of an hour may be charged on all loaded vehicles requiring to be discharged by owners which are not discharged after the expiry of nine hours of daylight from the time of being placed in position for unloading. The railway administration may at its option, unload the vehicle and charge the consignee for doing so and charge wharfage on the contents under rule 3.

III.—Calculation of Charges.

8. In calculating wharfage and demurrage charges fractions of one anna less than six pies shall be dropped and six pies and over shall be charged as one anna. Where the total amount of demurrage or wharfage due on any consignment is less than two annas it shall be foregone.

IV.—General.

9. In the event of goods requiring to be loaded or unloaded by owners becoming liable to both demurrage and wharfage charges the railway administration may levy both demurrage and wharfage charges for such periods as the goods would be liable to such charges under these rules.

10. If and for so long as the state of the traffic or any sudden emergency makes it necessary, and after advertisement in the local newspapers, the rate of demurrage or wharfage may be increased and the free time curtailed.

11. The railway administration shall have the same lien on goods for demurrage, wharfage, and, if incurred, for unloading, as for freight, and these charges must, unless under special arrangements a running account is kept, be paid before the goods are removed.

12. Where the free time allowed in the previous rules includes either Sunday, Christmas Day or Good Friday, such days shall be allowed free in addition.

V.—Treatment and Disposal of Unclaimed Goods, Luggage & Parcels and of Lost Property found in Railway Vehicles or on Railway Premises.

13. Subject to the exception mentioned in rule 18 below, unclaimed goods shall be kept on hand at the station to which invoiced for a period of not less than one month during which time the notice prescribed in section 56, sub-section (1), of the Indian Railways Act, 1890 (IX of 1890), will, if possible be served upon the person appearing entitled thereto.

14. If not taken delivery of within a period of not less than one month after receipt at the station to which invoiced, unclaimed goods may be sent to the unclaimed goods or lost property office and dealt with as laid down in rule 21 below.

15. Unclaimed articles shall be liable to the wharfage and demurrage charges hereinbefore referred to, as well as to all freight and special expenditure incurred by the railway administration on account of their custody and disposal.

16. After being on hand for one month unclaimed booked luggage and parcels may be transferred to the lost property office and dealt with in the manner prescribed in rules 15, 17, 18, 21 and 22.

17. Where articles such as arms, ammunition, explosives, intoxicating liquors, opium and its preparations, and hemp, drugs, the sale of which by unlicensed persons is prohibited by law, are left unclaimed in the possession of the railway administration, they will be made over to the police or excise authorities for disposal under the laws affecting the article. When not of a dangerous, perishable or offensive character, they will, however, be retained in the possession of the railway administration for the same period as that prescribed for other unclaimed articles.

The rule in so far as it relates to explosives is supplemental to, and not in modification of, rule 6 IV of the rule made under the Indian Explosives Act, 1884 (IV of 1884) and published under the Government of India, Home Department, Notification No. 5528, dated the 11th October 1901, in Part I of the *Gazette of India* of the 12th October 1901 (*vide* Appendix B to part II of the General Rules for open lines of Railway in British India promulgated with the Government of India, Public Works Department, Circular No. 6 railway, dated the 12th March 1895, as received by the Government of India, Public Works Department, Circular No. 2 railway, dated the 16th January 1902), and any modifications of the same which may hereafter be made.

18. Unclaimed perishable articles may be disposed of by the station master of the station at which they may be left after the expiry of 24 hours or earlier if they are, or are likely to become, offensive.

19. Lost property found in railway vehicles or on railway premises may, subject to the exception mentioned in rule 18, be sent to the nearest lost property office and be similarly dealt with.

20. An account of all unclaimed luggage, and of any lost property found on the line or on railway premises, shall be kept by the station master.

21. Public sales by auction shall be held from time to time of all unclaimed or lost property which has remained in the possession of the railway administration over six months. At least fifteen days' previous notice of each auction shall be given by advertisement in a newspaper.

22. Any surplus proceeds arising out of sales of lost property or unclaimed consignments will, after payment of all charges and expenses due to the railway administration, be paid to the person or persons thereto entitled.

VI.—Cloak-Rooms.

23. Passengers may leave small parcels or packages in the cloak-rooms at such stations as may be specified from time to time by the railway administration.

24. A charge of two annas per maund or part of a maund with a minimum charge per package as for one maund may be levied for each 24 hours or part of 24 hours during which the parcel or package remains in a cloak-room.

25. The responsibility of the railway administration for articles left in a cloak-room shall be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872 (IX of 1872).

26. A receipt ticket shall be given to any person depositing parcels and packages for custody in a cloak-room; and delivery will be made to any person presenting such receipt ticket, after which all responsibility of the railway administration in respect of such parcels or packages shall absolutely cease and determine.

27. Articles deposited in cloak-rooms which are unclaimed may, after a period of one month, be transferred to the lost property office and dealt with as prescribed in rules 15, 17, 18, 21 and 22 for unclaimed consignments.

(Signed) A. BRERETON,

Secretary to the Government of India.

By order of His Excellency the Right Honourable the Governor in Council.

G. A. ANDERSON,

Secretary to Government.



CONDITIONS SANCTIONED UNDER S. 54 (1).

Circular No. 9, Railway.

GOVERNMENT OF INDIA, PUBLIC WORKS DEPARTMENT
RAILWAY TRAFFIC.*Simla, the 14th May, 1895.***Revision of the existing forms for—**

(1) Goods consignment note. (2) Goods receipt note. (3) Luggage ticket. (4) Parcels way bill. (5) Single ticket for horses, carriages, dogs, etc. (6) Return ticket for horses, carriages, dogs, etc. (7) Live-stock ticket.

Read—

Sections 54 and 72 (1) of the Indian Railways Act, 1890.

Memorandum No. 128, dated the 23rd September, 1893, and letter No. 020, dated the 31st January, 1895 from the Secretary, Railway Conference, and their enclosures.

Read also—

Government of India, Public Works Department, Notification No. 247 of the 12th June 1894.

Observations.—The President of the Railway Conference of 1893 submitted to the Government of India revised forms of goods Consignment Notes, etc., which had been prepared by the members of the Conference with a view to the assimilation of the various forms in use on different railways in India.

2. When considering these drafts, which have been carefully examined with special reference to their legal aspect, it was held that a consignor cannot be required to submit to any conditions which require his signature, since he has a right to have his goods carried on the terms of the Indian Railways Act provided he tenders a consignment note giving the particulars mentioned in section 58 (1) of the Act; and that, if it is desired to impose more stringent conditions, reasonable concessions, having regard to the conditions imposed, must be made by the railway. In the latter case some form of risk note as contemplated in section 72 (2) of the Act would be used.

3. The draft forms as submitted by the Railway Conference have been accordingly revised and the consignment note as now prepared merely requires the consignor to certify to the correctness of the particulars entered in the consignment note, the condition being invited by a footnote to a public notice, printed on the back of

which contains such of the conditions proposed by the Railway Conference with respect to the receiving, forwarding and delivering of animals or goods, as are not inconsistent with the said Act. Conditions which are not covered by the terms of the Act have been omitted.

4. The Goods receipt note and the other forms have similarly undergone revision where necessary.

Resolution.—In exercise of the power conferred by Section 54 (1) of the Indian Railways Act, 1890, the Governor General in Council is pleased to approve of the accompanying forms, and to sanction, with effect from the date of receipt of this Resolution, their adoption on all lines of Railway in British India administered by the Government and for the time being, used for the public carriage of passengers, animals or goods.

2. The forms are now approved should also be brought to the notice of the administrations of the several railways not administered by the Government, and the Agents and Managers of those railways should be invited to introduce the forms on the lines under their control.

Order.—Ordered, that the Resolution, with the annexed forms, be kept at all railway stations for inspection, free of charge, by any person at all reasonable times, as directed by sub-section (2) of section 54, of the Indian Railways Act, 1890.

Ordered also that this Resolution and its enclosures be communicated to the

The Governments of Madras, Bombay, Bengal, the North-Western Provinces and Oudh, and the Punjab.

The Chief Commissioners of the Central Provinces, Burma and Assam.

The Residents at Hyderabad and in Mysore.

The Agents to the Governor General, Central India, Rajputana and Baluchistan.

The Director-General of Railways.

The Consulting Engineers to the Government of India for Railways, Calcutta, Lucknow and Assam.

Local Governments and Administrations and to the officers noted in the margin, for information & guidance; also to the Accountant-General, Public Works Department, for information.

(Signed) W. S. S. BISSET, LIEUT.-COLONEL, R. E.
Secretary.

Documents accompanying.

- (1) Goods consignment note. (2) Goods receipt note. (3) Luggage ticket (trefoil). (4) Parcels way bill (trefoil). (5) Single ticket for horses, carriages, dogs, etc. (trefoil). (6) Return ticket for horses, carriages, dogs, etc. (fourfoil). (7) Live-stock ticket (trefoil).

RAILWAY ADMINISTRATION

I do hereby certify that I have satisfied myself that the description, marks and weight or quantity of goods consigned by me have been correctly entered in this Consignment Note.

(Space for printing the foregoing certificate in the necessary vernaculars).
Signature of Sender or Deliverer of Goods.

The attention of the sender or deliverer of the goods is invited to the principal terms and conditions applying to the carriage of goods by railway, which are set forth in the Public Notice on the back of this document.
No alteration is to be made in the above entries after this Consignment Note has been signed by the Consignor.

The carries below to be filled up by railway staff only.

[illegible][illegible]

(Endorsement)

NOTICE TO CONSIGNORS.

The _____ Administration
Company hereby gives public notice:—

1. That the Railway Administration
Company will not be accountable for any articles unless the same are booked and a receipt for them given by their clerk or agent, and that when the articles are so accepted for conveyance, the responsibility of the Railway for the loss, destruction or deterioration of the articles is subject to the provisions of section 72 of the Indian Railways Act, IX of 1890.

2. That the Railway Administration
Company will not in any case, be responsible for the loss, destruction, or deterioration of parcels or packages containing the following articles, *viz.*:—Gold and Silver, coined or uncoined, manufactured or unmanufactured; Plated articles; Cloths and tissue and lace of which gold or silver forms part not being the uniform or part of the uniform of an officer, soldier, sailor police officer or person enrolled as a volunteer, under the Indian Volunteers Act, 1869, or any Public Officer, British or Foreign, entitled to wear uniform; Pearls, precious stones, jewellery, jade, jade-stone and trinkets; Watches, clocks, or time pieces of any description; Government securities; Government stamps; Bills of exchange, hundies, promissory notes, bank notes and orders or other securities for payment of money; Maps, writings and title-deeds; Printings, engravings, photographs, lithographs, carving, sculpture and other works of art; Art pottery and all articles made of glass, china or marble; Silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials; Shawls; Lace and furs; Opium; Narcotic preparations of hemp, such as ganja, charas, bhang &c., Ivory, ebony, coral and sandal wood; Goo-roo-chand or Goo-roo-chandan; Amber; musk, sandal-wood oil and other essential oils, used in the preparation of *Ittr* or other perfume; Musical and scientific instruments; Crude India rubber; Feathers; *Ittr*, Zahir Mohra Khatai, Cinematograph films and apparatus or any article of special value which the Governor General in Council may, by notification in the *Gazette of India*, add to this list, when the value of such articles exceed Rs. 100, *unless* the value and nature of such articles shall have been declared by the sender, and an insurance rate over and above the railway charges for carriage shall have been made to and accepted by some person duly authorized to receive the same on behalf of the Railway Administration
Company.

That where goods, insured as above, have been lost or destroyed, or have deteriorated, the compensation payable by the Railway Administration
Company shall not exceed the value declared, and the burden of proving the value so declared to

have been true value, shall notwithstanding anything in the declaration, lie on the persons claiming the compensation.

That the Station Masters at the several stations on the line are authorised to insure any of the abovementioned articles valued at from Rs. 100 to Rs. 500, but that for the insurance of any such articles valued at over Rs. 500, application must be made to the District Traffic Superintendents at the respective stations, namely

No other persons except those herein mentioned are authorized to accept insurance charges.

3. That the railway receipt given by the Railway Administration Company for the articles delivered for conveyance must be given up at destination by the consignee to the Railway Administration Company, otherwise the Railway may refuse to deliver, and that the signature of the consignee or his agent in the delivery book at destination shall be evidence of complete delivery.

If the consignee does not himself attend to take delivery, he must endorse on the receipt a request for delivery to the person to whom he wishes it made, and if the receipt is not produced, the delivery of the goods may, at the discretion of the Railway Administration Company, be withheld until the person entitled in its opinion to receive them has given an indemnity to the satisfaction of the Railway Administration Company.

4. That all claims against the Railway Administration Company for loss or damage to goods must be made to the clerk in charge of the station to which they have been booked before delivery is taken, and that a written statement of the description and contents of the articles missing, or of the damage received, must be sent forthwith to the Traffic Superintendent of the district in which the forwarding or receiving station is situated; otherwise, the Railway Administration Company will be freed from responsibility.

5. That by section 77 of the Indian Railways Act. IX of 1890, it is enacted that a person shall not be entitled to a refund of an over-charge in respect of animals or goods carried by railway, or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the Railway Administration Company within six months from the date of the delivery of the animals or goods for carriage by railway.

6. That the Railway Administration Company have the right of re-measurement, re-weighment, re-classification and re-calculation of rates, terminals and other charges.

at the place of destination, and of collecting, before the goods are delivered, any amount that may have been omitted or under-charged:—

7. That the freight on all goods must be paid either previously or at the time of delivery in accordance with the rules, and that by Section 55 of the Indian Railways Act, 1890, it is enacted that if a person fails to pay on demand made by or on behalf of a Railway Administration
Company, any rate, terminal or other charge due from him in respect of any animals or goods, the Railway Administration
Company may detain the whole or any of the animals or goods, or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into their possession.

8. That all goods left on the Railway Administration's
Company's premises are liable to wharfage and demurrage charges as per Goods Tariff, and these charges will also be levied on goods left on hand, pending payment of freight and charges due on them.

9. That goods booked to stations on the _____ Railway or Railways worked by the _____ Railway are carried subject to the rules and conditions printed from time to time in the Railway Administration's
Company's Goods Tariff, and goods booked to or over a foreign Railway are subject to the rules and regulations and to wharfage and other charges in force on such Railway.

10. That by Section 106 of the Indian Railways Act, 1890, it is enacted that if a person requested under section 58 to give an account with respect to any goods, gives an account which is materially false, he, and if he is not the owner of the goods, the owner also, shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

11. That by Section 107 of the Indian Railways Act, 1890, it is enacted that if, in contravention of section 59, a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway.

.....*Head Quarter Office.*
Date.....

.....
Printed name and designation of Railway Officer.



Enclosure No. 2 to Government of India Circular No. 9 Railway, of 1895.

GOODS RECEIPT NOTE COUNTERFOIL.

Pro. No.

From _____ Station.

Goods Consignment Note No. _____

Date.	Sender.	Consignee.	To what station consigned and route.	Description of goods and marks. (It is optional for any railway to omit this column)	INVOICE.	
					No.	Date.

GOODS RECEIPT NOTE,_____
RAILWAY.

Pro. No.

Goods Consignment Note No. _____

Station, Dated _____ 192 .

Received from _____ the undermentioned goods for conveyance by

Goods train consigned to _____ at _____ Station.

No. of Articles.	Description of Goods and marks.	Weight.		Weight charged for		Rate.	Paid.		To pay.	Remarks.
		Maunds.	Seers.	Maunds.	Seers		Rs.	As.	Rs.	As.

DELIVERY DETAILS.

Platform No. _____
 Dely-Book Folio _____
 Inv. No. _____ of _____
 Acctd. in W.E. _____
 Date available _____
 Date passed _____
 Duc Rs. _____ As. _____
 Wagon Nos. _____
 Passed by _____

These goods are accepted for conveyance subject to the conditions printed on the back hereof.

[Space for the foregoing paragraph being printed in the necessary vernaculars.]

_____ Station

(Endorsement)

NOTICE TO CONSIGNOR.

The Administration Company hereby gives public notice.

1. That the Railway Administration Company will not be accountable for any articles unless the same are booked and a receipt for them given by their clerk or agent, and that when the articles are so accepted for conveyance, the responsibility of the Railway for the loss, destruction, or deterioration of the articles is subject to the provisions of Section 72 of the Indian Railways Act 1890.

2. That the Railway Administration Company will not, in any case, be responsible for the loss destruction, or deterioration of parcels or packages containing the following articles, *viz.*—Gold and Silver, coined or uncoined, manufactured or unmanufactured, Plated articles; Cloths and tissue and lace of which gold or silver forms part not being the uniform or part of the uniform of an officer, soldier, sailor, police officer or persons enrolled as a volunteer, under the Indian Volunteers Act, 1869, or any public officer, British or Foreign, entitled to wear uniform; Pearls, precious stones, jewellery, jade, jade-stone and trinkets; Watches, clocks or time pieces of any description; Government securities; Government stamps; Bills of exchange, hundies, promissory notes, bank notes and orders or other securities for payment of money; Maps, writings and title-deeds; Paintings, engravings, photographs, lithographs, carvings, sculpture and other works of art; Art pottery and all article made of glass, china or marble; Silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials; Shawls; Lace and furs; Opium; Narcotic preparations of hemp, such as ganja, charas, bhang &c. Ivory, ebony, coral and sandal wood; Gooroochand or Gooroochandani, Amber; musk, sandal-wood oil and other essential oils, used in the preparation of *Itir* or other perfume; Musical and scientific instruments; Crude India rubber; Feathers; *Itir*, Zabir Mohra khatai, Cinematograph films and apparatus or any article of special value which the Governor-General in Council may, by notification in the *Gazette of India*, add to this list, when the value of such articles exceed Rs. 100, *unless* the value and nature of such articles shall have been declared by the sender, and an insurance rate over and above the railway charges for carriage shall have been paid to and accepted by some person duly authorized to receive the same on behalf of the Railway Administration Company.

That where goods, insured as above have been lost or destroyed, or have deteriorated, the compensation payable by the Railway Administration Company shall not exceed the value declared, and the burden of proving the value so declared to

have been true value, shall notwithstanding anything in the declaration, lie on the persons claiming the compensation.

That the Station Masters at the several stations on the line are authorised to insure any of the above mentioned articles valued at from Rs. 100 to Rs 500, but that for the insurance of any such articles valued at over Rs. 500, application must be made to the District Traffic Superintendents at the respective stations, namely No other persons except those herein mentioned are authorized to accept insurance charges.

3. That the Railway receipt given by the Railway Administration
Company for the articles delivered for conveyance, must be given up at destination by the consignee to the Railway Administration
Company, or the Railway may refuse to deliver, and that the signature of the consignee or his agent in delivery book at destination shall be evidence of complete delivery.

If the consignee does not himself attend to take delivery, he must endorse on the receipt a request for delivery to the person to whom he wished it made and if the receipt is not produced, the delivery of the goods may, at the direction of the Railway Administration
Company, be with-held until the person entitled in its opinion to receive them has given an indemnity to the satisfaction of the Railway Administration
Company.

4. That all claims against the Railway Administration
Company for loss or damage to goods must be made to the clerk in charge of the station to which they have been booked before delivery is taken, and that a written statement of the description and contents of the articles missing or of the damage received must be sent forthwith to the Traffic Superintendent of the District in which the forwarding or receiving station is situated; otherwise the Railway Administration
Company will be freed from responsibility.

5. That by Section 77 of the Indian Railways Act, 1890, it is enacted that a person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway, or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf, to the Railway Administration within six months from the date of the delivery of the animals or ~~Railway.~~

have the right of re-measurement,
terminals and other

charges at the place of destination, and of collecting before the goods are delivered any amount that may have been omitted or undercharged.

7. That the freight on all goods must be paid either previously or at the time of delivery in accordance with the rules, and that by Section 55 of the Indian Railways Act, 1890, it is enacted that if a person fails to pay on demand made by or on behalf of a Railway Administration Company, any rate, terminal or other charge due from him in respect of any animals or goods, the Railway Administration Company may detain the whole or any of the animals or goods, or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into their possession.

8. That all goods left on the Railway Administration's Company's premises are liable to wharfage and demurrage charges as per Goods Tariff, and these charges will also be levied on goods left on hand pending payment of freight, and charges due on them.

9. That goods booked to stations on the———Railway or Railway worked by the———Railway, are carried subject to the rules and conditions printed from time to time in the Railway Company's Goods Tariff; and goods booked to or over a foreign Railway are subject to the rules and regulations and wharfage and other charges in force on such railway.

10. That by Section 106 of the Indian Railways Act, 1890, it is enacted that if a person requested under Section 58 to give an account with respect to any goods, gives an account which is materially false, he, and if he is not the owner of the goods, the owners also, shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

11. That by Section 107 of the Indian Railways Act, 1890, it is enacted that, if in contravention of Section 59, a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury, or damage which may be caused by reason of such goods having been so brought upon the Railway.

.....Head Quarter Office.

Date.....

.....
Printed name and designation of Railway Officer.



Enclosure No. 3 to G. of I. Circular No. 9, Railway of 1895.

Luggage ticket.

FOR OWNER.

Type No. _____

_____ RAILWAY

LUGGAGE TICKET.

Name _____

Booked from _____

To _____ via _____

By the _____ train of _____ 192 .

_____ Packages { _____ with Guard,
 _____ „ Owner at Owner's risk.

	Maunds.	Seers.
Total weight ...		
Less allowed free upon _____		
Class ticket (s) No. (s.) _____		
Net weight ...		
Amount charged Rs. _____ As. _____		
_____ Clerk.		

This ticket must be given up to the railway before the luggage referred to in it is delivered to the holder.

For the conditions on which luggage is carried, see notice at the back of this ticket and the Time-bills and General Rule and Regulations of the Railway Administration.
Company

Note.—At the foot of the form to be retained by the Guard is the following clause:—

This is to be given up to the Station Master on arrival at destination.

(ENDORSEMENT ON FORM FOR OWNER).

RAILWAY.

1. All luggage of passengers will be subject to weightment, and any quantity in excess of the free allowance will be charged for in accordance with the rules in the Coaching Tariff, but the free allowance of luggage is made only at the place where the ticket is taken, and only to the place to which the ticket is available. All luggage is subject to reweightment and to recalculation of charges at destination.

2. In case in which luggage is sent on in advance of the owner to wait his arrival, the luggage will be kept at the station to which it is sent under the rules and charges of Railway concerned.

3. The railways over which the luggage is carried are not in any way responsible for loss of, or injury to, any of the articles mentioned in the second schedule of the Indian Railways Act, 1890, except as provided for in Section 75 of the Act, and all luggage is carried on the terms and conditions prescribed in the said Act.

4. All claims against the railway for loss of or damage to luggage must be made immediately to the clerk in charge of the station to which it has been booked, and a written statement of the description and contents of the articles missing, or of the damage received must be sent forthwith to the District Traffic Superintendent, otherwise the railway will not hold itself responsible.

5. *Left Luggage.*—Passengers may place their luggage in charge of the Station Master for temporary custody, paying the charges leviable under the rules prescribed in the Coaching Tariff. A ticket will be given when the luggage is deposited and the luggage will be delivered on surrender of the ticket, after which the responsibility of the railway ends. The responsibility of the railway for articles so left in charge of the railway will be that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872.

Printed name and designation of the Railway Officer.

Enclosure No. 4 to G. of I. Cir. No. 9, Railway, of 1895.

FOR OWNER.

Type No. _____ RAILWAY.

RAILWAY RECEIPT

Date _____

in connection with—

Parcels' Way Bill No. _____ from _____ to _____

Sender's name _____ to whom consigned _____

No. of packages	Description.	Actual weight.		Weight charged.		To pay.		Paid.	
		Mds.	Srs.	Mds.	Srs.	Rs.	As.	Rs.	As.

_____ Station clerk.

Special attention is drawn to the notices on the back, which contain the conditions upon which the parcels are received for conveyance.

This receipt should be sent by the consignor to the person to whom the parcel is to be delivered.

Note.—At the foot of the form to be retained by the Guard are the following clauses:—
Received _____ Station clerk. _____ Station clerk.

N. B.—The receiving Station must carefully check both the "To pay" and "Paid" amounts and correct the charges if any mistake is made, collecting the difference when necessary.

This to be given up to the Station Master on arrival at destination.

(Endorsement on form for owner.)

NOTICE TO CONSIGNOR.

The _____ Administration
Company hereby gives public notice:—

1. That the Railway Administration
Company will not be accountable for any articles unless the same are booked and a receipt for them given by their clerk or agent, and that when the articles are so accepted for conveyance, the responsibility of the Railway for the loss, destruction or deterioration of the articles is subject to the provisions of section 72 of the Indian Railways Act, IX of 1890.
2. That the Railway Administration
Company will not in any case, be responsible for the loss, destruction, or deterioration of parcels or packages containing the following articles, *viz.* :—Gold and Silver, coined or uncoined, manufactured or unmanufactured; Plated articles; Cloths and tissue and lace of which gold or silver forms part not being the uniform or part of the uniform of an officer, soldier, sailor, police officer or person enrolled as a volunteer, under the Indian Volunteers Act, 1869, or any Public Officer, British or Foreign, entitled to wear uniform; Pearls, precious stones, jewellery, jade, jade-stone and trinkets; Watches, clocks, or time pieces of any description; Government securities; Government stamps; Bills of exchange, hundies, promissory notes, bank notes and orders or other securities for payment of money; Maps, writings and title-deeds; Printings, engravings, photographs, lithographs, carving, sculpture and other works of art; Art pottery and all articles made of glass, china or marble; Silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials; Shawls; Lace and furs; Opium; Narcotic preparations of hemp, such as ganja, charas, bhang &c., Ivory, ebony, coral and sandal wood; Gooroochand or Gooroochandani; Amber; musk, sandal-wood oil and other essential oils, used in the preparation of *Ittr* or other perfume; Musical and scientific instruments; Crude India rubber; Feathers; *Ittr*, Zahir Mohra Katai, Cinematograph films and apparatus or any article of special value which the Governor General in Council may, by notification in the *Gazette of India*, add to this list, when the value of such articles exceed Rs. 100, unless the value and nature of such articles shall have been declared by the sender, and an insurance rate over and above the railway charges for carriage shall have been made to and accepted by some person duly authorized to receive the same on behalf of the Railway Administration
Company.

That where goods, insured as above, have been lost or destroyed, or have deteriorated, the compensation payable by the Railway Administration
Company shall not exceed the value declared, and the burden of proving the value so declared to

have been true value, shall notwithstanding anything in the declaration, lie on the persons claiming the compensation.

That the Station Masters at the several stations on the line are authorised to insure any of the abovementioned articles valued at from Rs. 100 to Rs. 500, but that for the insurance of any such articles valued at over Rs. 500, application must be made to the District Traffic Superintendents at the respective stations, namely
No other persons except those herein mentioned
are authorized to accept insurance charges.

3. That the railway receipt given by the Railway Administration
Company for the articles delivered for conveyance must be given up at destination by the consignee to the Railway Administration
Company, otherwise the Railway may refuse to deliver, and that the signature of the consignee or his agent in the delivery book at destination shall be evidence of complete delivery.

If the consignee does not himself attend to take delivery, he must endorse on the receipt a request for delivery to the person to whom he wishes it made, and if the receipt is not produced, the delivery of the goods may, at the discretion of the Railway Administration
Company, be withheld until the person entitled in its opinion to receive them has given an indemnity to the satisfaction of the Railway Administration
Company.

4. That all claims against the Railway Administration
Company for loss or damage to goods must be made to the clerk in charge of the station to which they have been hooked before delivery is taken, and that a written statement of the description and contents of the articles missing, or of the damage received, must be sent forthwith to the Traffic Superintendent of the district in which the forwarding or receiving station is situated; otherwise, the Railway Administration
Company will be freed from responsibility.

5. That by section 77 of the Indian Railways Act, IX of 1890, it is enacted that a person shall not be entitled to a refund of an over-charge in respect of animals or goods carried by railway, or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the Railway Administration
Company within six months from the date of the delivery of the animals or goods for carriage by railway.

6. That the Railway Administration
Company have the right of re-measurement, re-weighment, re-classification and re-calculation of rates, terminals and other

at the place of destination, and of collecting, before the goods are delivered, any amount that may have been omitted or under-charged.

7. That the freight on all goods must be paid either previously or at the time of delivery in accordance with the rules, and that by Section 55 of the Indian Railways Act, 1890, it is enacted that if a person fails to pay on demand made by or on behalf of a Railway Administration
Company, any rate, terminal or other charge due from him in respect of any animals or goods, the Railway Administration
Company may detain the whole or any of the animals or goods, or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into their possession.

8. That all goods left on the Railway Administration's
Company's premises are liable to wharfage and demurrage charges as per Goods Tariff, and these charges will also be levied on goods left on hand, pending payment of freight and charges due on them.

9. That goods booked to stations on the _____ Railway or Railways worked by the _____ Railway are carried subject to the rules and conditions printed from time to time in the Railway Administration's
Company's Goods Tariff, and goods booked to or over a foreign Railway are subject to the rules and regulations and to wharfage and other charges in force on such Railway.

10. That by Section 106 of the Indian Railways Act, 1890, it is enacted that if a person requested under section 58 to give an account with respect to any goods, gives an account which is materially false, he, and if he is not the owner of the goods, the owner also, shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

11. That by Section 107 of the Indian Railways Act, 1890, it is enacted that if, in contravention of section 59, a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway.

.....Head *Quarter Office*.

Date.....

.....
Printed name and designation of Railway Officer.



Enclosure No. 5 to G. of I. Cir. No. 9, Railway of 1895.

FOR OWNER.

No. _____

RAILWAY.

SINGLE TICKET FOR HORSES, CARRIAGES, DOGS, ETC.

Dated _____ 192 .

Sender's name _____

To whom Consigned _____

From _____ To _____ via _____

Number.	Description.	No. of Horse Box or Car- riage Truck.	—Ry.—				—Ry.—				Total charge.	
			Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.
	Horses... ..											
	Attendants carried free.											
	Carriages ()											
	Ditto ()											
	Palanquins											
	Dogs, etc.											
Insurance, certified value, Rs. _____			at 1 per cent., on Rs. _____ being value in excess of Rs. 500 per horse.									
			at 1 per cent., on Rs. _____ being value in excess of Rs. 10 per dog...									
Station Clerk.											TOTAL RS...	

This ticket should be given up to the Station Master on arrival at destination.

The railway does not undertake to load or unload horses, and will not be responsible for any injury which a horse, dog or other animal may receive in being put into or taken out of a vehicle or any hurt or injury, which may happen to it, while in the vehicle, except such as may be caused by any fault or negligence of the servants of the railway. Each horse must be in charge of a groom.

For detailed conditions under which animals, carriages, etc., are carried by railway, see the Railway Administration's Company's Tariff.

Note.—At the foot of the form to be retained for Record are the following clauses:—

The railway does not undertake to load or unload horses, and will not be responsible for any injury which a horse, dog, or other animal may receive in being put into or taken out of a vehicle or any hurt or injury, which may happen to it while in the vehicle, except such as may be caused by any fault or negligence of the servants of the railway. Each horse must be in charge of a groom.

For detailed conditions under which animals, carriages, etc., are carried by railway, see the Railway Administration's Company's Tariff.

Note.—At the foot of the form to be retained by the Guard are the following clauses:—

The receiving station must carefully check the charges, and, if any mistake is made, collect the difference when necessary.

This is to be given up to the Station Master on arrival at destination.

Enclosure No. 6 to G. of I. Cir. No. 9, Railway of 1895.

TICKET FOR OUTWARD JOURNEY, FOR OWNER.

No. _____

_____ RAILWAY.

RETURN TICKET FOR HORSES, CARRIAGES, DOGS, ETC.

Dated _____ 192 .

Sender's name _____

To whom consigned _____

From _____ To _____ and back via _____

Number.	Description.	No. of Horse Box or Car- riage Truck.	—Ry.		—Ry.		—Ry.		—Ry.		Total charge.	
	Horses		Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.
	Attendants carried free											
	Carriages (...)											
	Ditto (...)											
	Palanquins											
	Dogs, etc											
Insurance, certified value.		at 1 per cent, on Rs. _____ being value in excess of Rs. 500 per horse										
Rs. _____		at 1 per cent, on Rs. _____ being value in excess of Rs. 10 per dog.										
_____ Station clerk.												TOTAL Rs...

This ticket should be given up to the Station Master on arrival at destination.

He does not undertake to load or unload horses, and will not be responsible for any injury which a horse, dog or other animal may receive in being put into or taken out of a vehicle or any hurt or injury, which may happen to it, while in the vehicle, except such as may be caused by any fault or negligence of the servants of the railway. Each horse must be in charge of a groom.

For detailed conditions under which animals, carriages, etc., are carried by railway, see the Railway Administration's Company's Tariff.

Enclosure No. 6 to G. of I. Cir. No. 9, Railway of 1895.

**TICKET FOR RETURN JOURNEY.
FOR OWNER.**

No. _____

RAILWAY.

RETURN TICKET FOR HORSES, CARRIAGES, DOGS, ETC.

Dated _____ 192.

Sender's name _____

To whom Consigned _____

From _____ To _____ and back via _____

Number.	Description.	No. of Horse Box or Car- riage Truck.	—Ry.		—Ry.		—Ry.		—Ry.		Total charge.	
			Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.
	Horses... ..											
	Attendants carried free.											
	Carriages {											
	Ditto {											
	Palanquins											
	Dogs, etc.											
Insurance, certified value, { at 1 per cent., on Rs. _____ being value in excess of Rs. 500 per horse.												
Rs. _____ { at 1 per cent., on Rs. _____ being value in excess of Rs. 10 per dog...												
Station Clerk.											TOTAL RS...	

This ticket should be given up to the Station Master on arrival at destination. The railway does not undertake to load or unload horses, and will not be responsible for any injury which a horse, dog or other animal may receive in being put into or taken out of a vehicle or any hurt or injury, which may happen to it, while in the vehicle, except such as may be caused by any fault or negligence of the servants of the railway. Each horse must be in charge of a groom.

For detailed conditions under which animals, carriages, etc., are carried by railway, see the Railway Administration's Tariff.

Note.—At the foot of the form to be retained for Record are the following clauses:—

The railway does not undertake to load or unload horses, and will not be responsible for any injury which a horse, dog, or other animal may receive in being put into or taken out of a vehicle or any hurt or injury, which may happen to it while in the vehicle, except such as may be caused by any fault or negligence of the servants of the railway. Each horse must be in charge of a groom.

For detailed conditions under which animals, carriages, etc., are carried by railway, see the Railway Administration's Tariff.

Note.—At the foot of the form to be retained by the Guard are the following clauses:—

The receiving station must carefully check the charges, and, if any mistake is made, collect the difference when necessary.

This is to be given up to the Station Master on arrival at . . .

This ticket is to be given up to the Station Master on arrival at the Station to which the horse of animal is booked on out will issue a Way Bill for the return journey.

Type No. RAILWAY.

TICKET FOR LIVE STOCK, CONVEYED BY GOODS TRAIN IN VEHICLES OTHER THAN HORSE-BONES.

Sender From Station, to Consignee Date 192 Station.

Number and description of animals.	Number and description of vehicles in which carried	No. on the vehicle.	Ry. proportion.	Ry. proportion.	Ry. proportion.	Total charges.
						Rs.
Insurance, certified value Rs. <u>At</u> <u>per cent, on Rs.</u> <u>being value in excess of Rs.</u> <u>per animal...</u>						
TOTAL RS...						
Number of attendants free <u>Station</u> <u>Car.</u>						

This ticket should be given up to the Station Master on arrival at destination.

The railway does not undertake to load or unload horses or other animals, and will not be responsible for any injury which a horse or other animal may receive in being put into or taken out of a vehicle, or any hurt or injury which may happen to it while in the vehicle, except such as may be caused by any fault or negligence of the servants of the railway. Each vehicle load must be in charge of an attendant.

For detailed conditions under which animals, carriages, etc., are carried by railway, see the railway Administration's Tariff, Company's

Note—At the foot of the form to be retained for record are the following clauses.

The railway does not undertake to load or unload horses or other animals, and will not be responsible for any injury which a horse or other animal may receive in being put into or taken out of a vehicle, or any hurt or injury which may happen to it while in the vehicle, except such as may be caused by any fault or negligence of the servants of the railway. Each vehicle load must be in charge of an attendant.

For detailed conditions under which animals, carriages, etc., are carried by railway, see the Railway Administration's Tariff, Company's

Note—At the foot of the form to be retained for the guard are the following clauses.—
The receiving Station must carefully check the charges, and if any mistake is made, collect the difference when necessary. This is to be given up to the Station Master on arrival at destination.

FORMS OF RISK NOTES.

RISK NOTE FORM A.

[Approved by the Governor-General in Council under Section 72 (2)
(b) of the Indian Railways Act, IX of 1890].

(To be used when articles are tendered for carriage which are either
already in bad condition or so defectively packed as to be liable
to damage leakage, or wastage in transit).

STATION.

192 .

Whereas the consignment of _____

_____ tendered by $\frac{me}{us}$, as per Forwarding Order

No. _____ of this date, for despatch by the _____

Railway Administration or their transport agents or carriers to _____ station,

and for which $\frac{I}{we}$ have received Railway Receipt No. _____ of same date, is in

bad condition, $\frac{and}{or}$ liable to damage, leakage, or wastage in transit as follows:—

$\frac{I}{we}$, the undersigned, to hereby agree and undertake to hold the said Railway
Administration and all other Railway Administrations working in connection there-
with, and also all other transport agents or carriers employed by them respectively,
over whose Railways or by or through whose transport Agency or Agencies the
said goods may be carried in transit from _____ Station to
_____ Station harmless and free from all responsibility.
for the condition in which the aforesaid goods may be delivered to the consignee at
destination and for any loss arising from the same.

WITNESS.

Signature of sender _____

(Signature) _____

Rank or {

Father's Name _____

(Residence) _____

Caste _____ Age _____

WITNESS.

(Signature) _____

Profession _____

(Residence) _____

Residence _____

Note—The above form is, for the convenience of the public, translated into the
vernacular, but the form in English is the authoritative form, and the Railway
Administration accept no responsibility for the correctness of the vernacular translation,

Enclosure No. 7 to Government of India Circular No. 9 Railway, of 1895.
FOR OWNER

Type No.

RAILWAY.

TICKET FOR LIVE STOCK, CONVEYED BY GOODS TRAIN IN VEHICLES OTHER THAN HORSE-BONES.

Date _____

192 .

Froy

Station, to

Consigliere

Station.

Number and description of animals.	Number and description of vehicles in which carried	No. on the vehicles.	Ry. proportion.	Ry. proportion.	Ry. proportion.	Ry. proportion.	Total charges.
							Rs.
Insurance, certified value Rs. _____ At _____ per cent, on Rs. _____ being value in excess of Rs. _____ per animal...							
Total Rs...							
Number of attendants free...							Station Clerk

This ticket should be given up to the Station Master on arrival at destination.

The railway does not undertake to load or unload horses or other animals, and will not be responsible for any injury which a horse or other animal may receive in being put into or taken out of a vehicle, or any hurt or injury which may happen to it while in the vehicle, except such as may be caused by any fault or negligence of the servants of the railway. Each vehicle load must be in charge of an attendant.

For detailed conditions under which animals, carriages, etc., are carried by railway, see the railway Administration's Tariff, Company's

Note—At the foot of the form to be retained for record are the following clauses.

The railway does not undertake to load or unload horses or other animals, and will not be responsible for any injury which a horse or other animal may receive in being put into or taken out of a vehicle, or any hurt or injury which may happen to it while in the vehicle, except such as may be caused by any fault or negligence of the servants of the railway. Each vehicle load must be in charge of an attendant.

For detailed conditions under which animals, carriages, etc., are carried by railway, see the Railway Administration's Tariff. Company's.

Note—At the foot of the form to be retained by the guard are the following clauses:—

This is to be given up to the Station Master as directed at classifications.

FORMS OF RISK NOTES.

RISK NOTE FORM A.

I Approved by the Governor-General in Council under Section 72 (2)
(b) of the Indian Railways Act, IX of 1890.]

(To be used when articles are tendered for carriage which are either
already in bad condition or so defectively packed as to be liable
to damage leakage, or wastage in transit).

STATION.

192

Whereas the consignment of _____

_____ tendered by $\frac{me}{us}$ as per Forwarding Order
No. _____ of this date, for despatch by the _____
Railway Administration or their transport agents or carriers to _____ station,
and for which $\frac{I}{we}$ have received Railway Receipt No. _____ of same date, is in
bad condition $\frac{and}{or}$ liable to damage, leakage, or wastage in transit as follows:—

$\frac{I}{we}$ the undersigned, to hereby agree and undertake to hold the said Railway
Administration and all other Railway Administrations working in connection there-
with, and also all other transport agents or carriers employed by them respectively,
over whose Railways or by or through whose transport Agency or Agencies the
said goods may be carried in transit from _____ Station to
_____ Station harmless and free from all responsibility
for the condition in which the aforesaid goods may be delivered to the consignee at
destination and for any loss arising from the same.

WITNESS.

(Signature) _____
(Residence) _____

Signature of sender _____

Rank or { Father's Name _____
Caste _____ Age _____

WITNESS.

(Signature) _____
(Residence) _____

Profession _____
Residence _____

Note—The above form is, for the convenience of the public, translated into _____
ular, but the form in English is the authoritative form, and the Railway Admini-
cept no responsibility for the correctness of the vernacular translation.

RISK NOTE, FORM B.

[Approved by the Governor-General in Council under Section 72 (2)
(b) of the Indian Railways Act, IX of 1890].

(To be used when the sender elects to despatch at a " Special reduced " or
" Owner's Risk " rate articles or animals for which an alternative
" Ordinary " or " Risk acceptance " rate is quoted in the tariff).

STATION

192

Whereas the consignment of _____

tendered by $\frac{me}{21}$

as per Forwarding Order No. _____ of this date, for despatch by the _____
_____ Railway Administration or their transport agents or
carriers to _____ station on which $\frac{1}{100}$ have received
the Railway Receipt No. _____ of same date, is charged at a special reduced
rate instead of at the ordinary tariff rate chargeable for such consignment, $\frac{1}{100}$
the undersigned, do, in consideration of such lower charge, agree and undertake
to hold the said Railway Administration and all other Railway Administrations
working in connection therewith, and also all other transport agents or carriers
employed by them respectively, over whose Railways or by or through whose
transport agency or agencies the said goods or animals may be carried in transit
from _____ Station to _____ Station harmless and
free from all responsibility for any loss, destruction, or deterioration of, or damage
to, the said consignment, from any cause whatever *except for the loss of a complete
consignment or of one or more complete packages forming part of a consignment due
either to the wilful neglect of the Railway Administration, or to theft by or to the
wilful neglect of its servants, transport agents or carriers employed by them before,
during and after transit over the said Railway or other Railway lines working in
connection therewith or by any other transport agency or agencies employed by
them respectively, for the carriage of the whole or any part of the said consignment;
provided the term "wilful neglect" be not held to include fire, robbery from a running
train or any other unforeseen event or accident.*

WITNESS.

(Signature) _____
(Residence) _____

Signature of sender _____
Rank or { Father's Name _____
Caste _____ Age _____

WITNESS.

(Signature) _____
(Residence) _____

Profession _____
Residence _____

Note — The above form is, for the convenience of the public, translated into the vernacular
but the form in English is the authoritative form, and the Railway Administration accepts no
responsibility for the correctness of the vernacular translation.

RISK NOTE, FORM C.

[Approved by the Governor General in Council under Section 72 (2) (b)
of the Indian Railways Act, IX of 1890.]

*To be used when at Sender's request, open wagons, carts or boats are used
for the conveyance of goods liable to damage when so carried, and
which, under other circumstances, would be carried in
covered wagons, carts or boats.*

STATION.

192 .

Whereas the consignments of _____
_____ tendered by

me
us, as per Forwarding Order No. _____ of this date, for despatch by the
_____ Railway Administration or their transport agents
or carriers to _____ station, and for which $\frac{1}{we}$ have received

Railway Receipt No. _____ of same date, is at $\frac{my}{our}$ request loaded in open
wagons, carts or boats to be so carried to destination, $\frac{1}{we}$, the undersigned, do

hereby agree and undertake to hold the said Railway Administration and all
other Railway Administrations working in connection therewith, and also all
other transport agents or carriers employed by them respectively, over whose
Railways or by or through whose transport agency or agencies the said goods may
be carried in transit from _____ station to _____
station harmless and free from all responsibility for any destruction or deteriora-
tion of, or damage to, the said consignment which may arise by reason of the
consignment being conveyed in open wagons, carts or boats during transit over
the said Railway or other Railways working in connection therewith or during
transit by any other transport agency or agencies employed by them, respectively.

WITNESS.

Signature of sender _____

(Signature) _____

(Residence) _____

Rank or

{ Father's name _____

{ Caste _____ Age _____

WITNESS.

(Signature) _____

(Residence) _____

Profession _____

Residence _____

Note.—The above form is, for the convenience of the public, translated into the
vernacular, but the form in English is the authoritative form, and the Railway Ad-
ministration accepts no responsibility for the correctness of the vernacular translation.

RISK NOTE, FORM D.

[Approved by the Governor General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used when the Sender elects to despatch at a "Special reduced" or "Owner's risk" rate dangerous, explosive or combustible articles for which an alternative "Ordinary" or "Risk acceptance" rate is quoted in the Tariff.)

STATION.

192 .

Whereas the consignment of _____ tendered by

me/us, as per Forwarding Order No. _____ of this date, for despatch by the Railway Administration or their transport agents or carriers to _____

station, and for which $\frac{1}{100}$ have received Railway Receipt No. _____

of same date, is charged at a special reduced rate instead of at the ordinary tariff rate chargeable for such consignment, $\frac{1}{100}$, the undersigned, do, in consideration of

such lower charge, agree and undertake to hold the said Railway Administration and all other transport agents or carriers employed by them, respectively, over whose Railways or by or through whose transport agency or agencies the said goods may be carried in transit from _____ station to _____

station harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignment from any cause whatever *except for the loss of a complete consignment or of one or more complete packages forming part of a consignment due either to the wilful neglect of the Railway Administration or to the wilful neglect of its servants, transport agents or carriers employed by them*, before, during and after transit over the said Railway or other Railway lines working in connection therewith, or by any other transport agency or agencies employed by them, respectively, for the carriage of the whole or any part of the said consignment *provided the term "wilful neglect" be not held to include fire, robbery from a running train or any other unforeseen event or accident.*

$\frac{1}{100}$ further agree to accept responsibility for any consequences to the property of the aforesaid Railway Administration (s) and of their transport agents and carriers or to the property of other persons that may be in the course of conveyance, which may be caused by the explosion of, or otherwise, by the said consignment, and that all risk and responsibility whether to the Railway Administration (s) or their transport agents and carriers, to their servants or to others, remains solely and entirely with me/us

WITNESS.

(Signature) _____
(Residence) _____

WITNESS.

(Signature) _____
(Residence) _____

Signature of sender. _____

Rank or { Father's Name _____
Caste _____ Age _____

Profession _____
Residence _____

Note—The above form is, for the convenience of the public, translated into the vernacular, but the form in English is the authoritative form, and the Railway Administration accepts no responsibility for the correctness of the vernacular translation

RISK NOTE, FORM E.

[Approved by the Governor General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used when booking elephants or horses of a declared value exceeding Rs. 500 a head; mules, camels or horned cattle Rs. 50 a head; donkeys, sheep, goats, dogs or other animals Rs. 10 a head, without payment of the percentage on value authorized in section 73 of Act, IX of 1890, as amended by section 4 of Act, IX of 1896).

STATION.

192 .

Whereas $\frac{1}{w}$ the undersigned have tendered to the Railway Administration for despatch to _____ station the animals (s) mentioned below, for which $\frac{1}{w}$ have received Railway Ticket No. _____ of this date;

And whereas $\frac{1}{w}$ have paid to the said Railway Administration only their ordinary freight charge without any extra charge for insurance;

And whereas the said Railway Administration for such ordinary freight charged holds itself responsible for proved damages to (each of) the said animal (s) caused by neglect or misconduct of its servants to the extent of the value mentioned below;

And whereas the said Railway Administration has notified that it will not be liable for damage or loss arising from fright or restiveness, or delay not caused by the negligence or misconduct of its servants, and such condition is accepted by $\frac{mc}{us}$;

$\frac{1}{w}$, the undersigned, do, in consideration of the foregoing terms and conditions, hereby agree and undertake that the responsibility of the said Railway Administration and all other Railway Administrations working in connection therewith, and also all other transport agents or carriers employed by them respectively, over whose Railways or by or through whose transport agency or agencies the said animal (s) may be carried in transit from _____ station to _____ station for the loss, destruction or deterioration of, or damage to (each of), the said animal (s) shall not exceed the value mentioned below:—

Animals.			Animals.		
No.	Description.	Value of each.	No.	Description.	Value of each.
		Rs.			Rs.
	Elephants ...	500		Donkeys ...	10
	Horses ...	500		Sheep ...	10
	Mules ...	50		Goats ...	10
	Camels ...	50		Dogs ...	10
	Horned cattle ...	50		Other animals ...	10

Signature of sender _____

WITNESS.
(Signature) _____
(Residence) _____

Rank or { Father's Name _____
Caste _____ Age _____
WITNESS.

WITNESS.
(Signature) _____
(Residence) _____

Profession _____
Residence _____

Note.—The above form is, for the convenience of the public, translated into the vernacular, but the form in English is the authoritative form, and the Railway Administration accepts no responsibility for the correctness of the vernacular translation.

RISK NOTE, FORM D.

[Approved by the Governor General in Council under Section 72 (2) (b)
of the Indian Railways Act, IX of 1890.]

(To be used when the Sender elects to despatch at a "Special reduced" or "Owner's risk" rate dangerous, explosive or combustible articles for which an alternative "Ordinary" or "Risk acceptance" rate is quoted in the Tariff.)

STATION.

192 .

Whereas the consignment of _____ tendered by

me
us, as per Forwarding Order No. _____ of this date, for despatch by the
Railway Administration or their transport agents or carriers to _____

station, and for which $\frac{1}{100}$ have received Railway Receipt No. _____

of same date, is charged at a special reduced rate instead of at the ordinary tariff
rate chargeable for such consignment, $\frac{1}{100}$, the undersigned, do, in consideration of

such lower charge, agree and undertake to hold the said Railway Administration
and all other transport agents or carriers employed by them, respectively, over whose
Railways or by or through whose transport agency or agencies the said goods may
be carried in transit from _____ station to _____

station harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignment from any cause whatever except
for the loss of a complete consignment or of one or more complete packages forming
part of a consignment due either to the wilful neglect of the Railway Administration
or to the wilful neglect of its servants, transport agents or carriers employed by them,
before, during and after transit over the said Railway or other Railway lines
working in connection therewith, or by any other transport agency or agencies
employed by them, respectively, for the carriage of the whole or any part of the
said consignment provided the term "wilful neglect" be not held to include fire,
robbery from a running train or any other unforeseen event or accident.

$\frac{1}{100}$ further agree to accept responsibility for any consequences to the property of the aforesaid Railway Administration (s) and of their transport agents
and carriers or to the property of other persons that may be in the course of
conveyance, which may be caused by the explosion of, or otherwise, by the
said consignment, and that all risk and responsibility whether to the Railway
Administration (s) or their transport agents and carriers, to their servants or to
others, remains solely and entirely with me
us

WITNESS.

(Signature) _____
(Residence) _____

Signature of sender. _____

Rank or { Father's Name _____
Caste _____ Age _____

WITNESS.

(Signature) _____
(Residence) _____

Profession _____
Residence _____

Note—The above form is, for the convenience of the public, translated into the vernacular,
but the form in English is the authoritative form, and the Railway Administration accepts no
responsibility for the correctness of the vernacular translation

RISK NOTE, FORM G.

[Approved by the Governor General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used as an alternative to Risk Note, Form D, in the case of dangerous explosive or combustible articles, for which an alternative "Ordinary" or "Risk acceptance" rate is quoted in the Tariff, when the sender desires to enter into a general agreement instead of executing a separate Risk Note for each consignment.)

STATION.

192 .

Whereas all consignments of _____ for which the

Railway Administration quotes Owner's Risk or Special reduced rates and Railway risk or Ordinary rates are (unless $\frac{1}{10}$ shall have entered into a special contract in

relation to any particular consignment) despatched by $\frac{me}{us}$ at $\frac{my}{our}$ own risk and are charged for by the said Railway Administration at special reduced or Owner's

Risk rates, instead of at Ordinary tariff or Railway Risk rates, $\frac{1}{10}$ the undersigned,

in consideration of such consignment, being charged for at the special reduced or Owner's risk rates, do hereby agree and undertake to hold the said Railway Administration and all other Railway Administrations working in connection therewith and also other transport agents or carriers employed by them, respectively, over whose Railways or by or through whose transport agency or agencies the said consignment of _____ may be carried in transit from _____ station to _____

station harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, all or any such consignment from any cause whatever *except for the loss of a complete consignment or of one or more complete packages forming part of a consignment due either to the wilful neglect of the Railway Administration or to theft by or to the wilful neglect of its servants, transport agents or carriers employed by them, before, during and after transit over the said Railway or other Railway lines working in connection therewith, or by any other transport agency or agencies employed by them, respectively, for the carriage of the whole or any part of the said consignments, provided the term "wilful neglect" be not held to include fire, robbery from a running train or any other unforeseen event or accident.*

$\frac{1}{10}$ further agree to accept responsibility for any consequences to the property of the aforesaid Railway Administration (s) and of their transport agents and carriers or to the property of other persons that may be in the course of conveyance, which may be caused by the explosion of, or otherwise, by all or any of the said consignments and that all risk and responsibility whether to the Railway Administration or their transport agents and carriers, to their servants or to others, remain solely and entirely with $\frac{me}{us}$.

WITNESS.

Signature of sender _____

(Signature) _____

(Residence) _____

Rank or { Father's Name _____

WITNESS.

(Signature) _____

(Residence) _____

Note—The above form is, for the convenience of the public, translated into _____ but the form in English is the _____ form, and the Railway _____ translation.

RISK NOTE, FORM H.

[Approved by the Governor General in Council under Section 72 (2)
(b) of the Indian Railways Act, IX of 1890].

(To be used as an alternative to Risk Note Form B, when a sender desires to enter
into a general agreement instead of executing a separate Risk Note
for each consignment.)

STATION.

192 .

Whereas all consignments of goods or animals for which the _____ Railway
Administration quotes both Owner's risk or special reduced rates and Railway
risk or ordinary rates are (unless $\frac{1}{100}$ shall have entered into a special contract in
relation to any particular consignment) despatched by $\frac{mc}{us}$ at $\frac{mc}{our}$ own risk and are
charged for by the _____ Railway Administration at special
reduced or owner's risk rates, instead of at an Ordinary tariff or Railway Risk rates,
 $\frac{1}{100}$ the undersigned, in consideration of such consignments being charged for at
the special reduced or Owner's risk rates, do hereby agree and undertake to hold
the _____ Railway Administration and all other Railway Administrations
working in connection therewith, and also all other transport agents or carriers
employed by them respectively, over whose Railways or by or through whose
transport agency or agencies the said goods or animals may be carried in transit
from _____ Station to _____ Station harmless and
free from all responsibility for any loss, destruction, or deterioration of, or damage
to, the said consignment, from any cause whatever except for the loss of a complete
consignment or of one or more complete packages forming part of a consignment due
either to the wilful neglect of the Railway Administration, or to theft by or to the
wilful neglect of its servants, transport agents or carriers employed by them before,
during and after transit over the said Railway or other Railway lines working in
connection therewith or by any other transport agency or agencies employed by
them respectively, for the carriage of the whole or any part of the said consignment;
provided the term "wilful neglect" be not held to include fire, robbery from a running
train or any other unforeseen event or accident.

WITNESS.

Signature of sender _____

(Signature) _____

Rank or {

Father's Name _____

(Residence) _____

Caste _____ Age _____

WITNESS.

(Signature) _____

Profession _____

(Residence) _____

Residence _____

Note — The above form is, for the convenience of the public, translated into the vernacular
but the form in English is the authoritative form, and the Railway Administration accepts no
responsibility for the correctness of the vernacular translation.

RISK NOTE, FORM X.

[Approved by the Governor General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used when the sender elects to despatch an "excepted" article or articles specified in the second schedule to the Indian Railways Act, IX of 1890, whose value exceeds one hundred rupees without payment of the percentage on value authorized in Section 75 of that Act.

STATION.

192 .

Whereas the consignment of _____ tendered by

the _____ as per Forwarding Order No. _____ of this date, for despatch by the _____ Railway Administration or their transport agents or carriers to _____ station, and for which $\frac{1}{100}$ have received

Railway Receipt No. _____ of same date, is charged at the ordinary rates for carriage, and whereas $\frac{1}{100}$ have been required to pay, and elected not to pay, a percentage on the value of the consignment by way of compensation for increased risk, $\frac{1}{100}$, the undersigned, do therefore agree and undertake to hold the said

Railway Administration and all other Railway Administrations working in connection therewith, and also all other transport agents or carriers employed by them respectively, over whose Railways or by or through whose transport agency or agencies the said goods may be carried in transit from _____ station to _____ station harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignment from any cause whatever before, during and after transit over the said Railway or other Railway lines working in connection therewith, or by any other transport agency or agencies employed by them, respectively for the carriage of the whole or any part of the said consignment.

WITNESS.

Signature of sender _____

(Signature) _____

Rank or

{ Father's name _____

(Residence) _____

{ Caste _____ Age _____

WITNESS.

(Signature) _____

Profession _____

(Residence) _____

Residence _____

Note.—The above form is, for the convenience of the public, translated into the vernacular, but the form in English is the authoritative form, and the Railway Administration accepts no responsibility for the correctness of the vernacular.

RISK NOTE, FORM Y.

[Approved by the Governor General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used as an alternative to Risk Note, Form X, when the sender elects to enter into a general agreement for a term not exceeding six months, for the despatch of "excepted" articles specified in the second schedule to the Indian Railways Act, IX of 1890, whose value exceeds one hundred rupees without payment of the percentage on value authorized in Section 75 of that Act instead of executing a separate Risk Note for each consignment.)

STATION.

192 .

Whereas the consignment of _____ tendered by _____

me for despatch by the _____ Railway Administration or their transport agents or carriers are charged at the ordinary rates for carriage and whereas $\frac{1}{100}$ have been required to pay or engage to pay and elected not to pay or engage to pay, a percentage on the value of the consignments by way of compensation for increased risk, $\frac{1}{100}$ the undersigned, do therefore agree and undertake except in relation to any particular consignment for which $\frac{1}{100}$ may have entered into a special contract, to hold the said Railway Administration and all other Railway Administrations working in connection therewith, and also all other transport agents or carriers employed by them, respectively, over whose Railways or by or through whose transport agency or agencies the said goods may be carried in transit, harmless and free from all responsibility for any loss, destruction or deterioration of or damage to, the said consignments from any cause whatever before, during and after transit over the said Railway or other Railway lines working in connection therewith, or by any other transport agency or agencies employed by them, respectively, for the carriage of the whole or any part of the said consignment.

WITNESS.

(Signature) _____
(Residence) _____

Signature of sender _____

Rank or { Father's Name _____
Caste _____ Age _____

WITNESS.

(Signature) _____
(Residence) _____

Profession _____
Residence _____

Note.—The above form is, for the convenience of the public, translated into the vernacular, but the form in English is the authoritative form, and the Railway Administration accepts no responsibility for the correctness of the vernacular translation

INDEMNITY NOTE.

I hereby acknowledge to have received from the _____ Railway Company
valued at Rupees _____

which _____ despatched to my address from the _____
Station of the _____
Railway Company, on or about the _____ day of _____
the railway receipt for which has been _____
and for myself, my heirs, executors and administrators, I undertake in considera-
tion of such delivery as aforesaid to hold the said Railway Company, their Agents
and Servants, harmless and indemnified in respect of all claims to the said goods.

And I the undersigned, signing below the consignee of these goods, certify
that to the best of my belief the first signer is the *bona fide* owner of the goods, and
that I undertake the whole of the said liability equally with the consignee and
for this purpose I affix my signature hereto.

Signature of Consignee

Father's Name _____

Caste _____ Age _____

Profession _____

Residence _____

Witness _____

Caste _____ Age _____

Profession _____

Residence _____

Signature of Surety

Father's Name _____

Caste _____ Age _____

Profession _____

Residence _____

Witness _____

Father's Name _____

Caste _____ Age _____

Profession _____

Residence _____

Date _____

Note.—This bond is an agreement ranging under clause (b) of Article 5 of
Schedule I of Act I of 1899, and therefore chargeable with a stamp duty of
annas irrespective of the value of the goods.

APPENDIX D.

ACT No. III OF 1865.¹

[As Amended by Act XIII of 1921.]

An Act relating to the rights and liabilities of Common Carriers.

Preamble. Whereas it is expedient not only to enable carriers to limit their liability for loss of or damage to property delivered to them to be carried but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or agents; It is enacted as follows:—

1. For the Statement of Objects and Reasons of the Bill which was passed into law as Act III of 1865, *see* Gazette of India Extraordinary, dated 1st August 1864. For proceedings relating to the Bill, *see ibid*, supplement, p. 497, and *ibid*, 1865, pp. 51, 64 and 65.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), s. 3, printed, General Acts, Vol. II.

It has been applied to Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I (Burma Code, Ed. 1899, p. 260); the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III of 1872), s. 31, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899) [printed, Bengal Code]; the Arakan Hill District (with a modification) by the Arakan Hill District Regulation, 1874 (IX of 1874), s. 3 [printed, Burma Code, Ed. 1899, p. 307] It has been declared; by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874) [General Acts, Vol. II], to be in force in the following Scheduled Districts, namely:—

Sindh	...	...	see Gazette of India, 1880, Pt. I, p. 672.
West Jalpaiguri, the Western Hills of Darjiling the Darjiling Tarai and the Damson Sub-division of the Darjiling District	...		
The Districts of Hazaribagh, Lohardaga [now called the Ranchi District, <i>see</i> Calcutta Gazette, 1899 Pt. I, p. 44] and Manbhum		Ditto,	1881, Pt. I. p. 74.

- Short title. 1. This Act may be cited as the Carriers Act, 1865.
- Interpretation clause. 2. In this Act, unless, there be something repugnant in the subject or context,—
- “Common carrier.” “common carrier” denotes a person, other than the Government, engaged in the business of transporting for hire property from place to place by land or inland navigation, for all persons indiscriminately:

Carrier.—The carrier means a person or company who undertakes to transport the goods of another person from one place to another for hire. *Mylappa v. British S. N. Co. Ltd.* 45 Ind. Cas. 485.

and Pargana Dhalbhum and the Kolhan in the District of Singbhum	Ditto,	1881, Pt. I, p. 404
The Porahat Estate in the District of Singbhum	Ditto,	1897, Pt. I, p. 1059.
Kumaon and Garhwal	Ditto,	1876, Pt. I, p. 605
The Scheduled portion of the Mirzapur District	Ditto,	1878, Pt. I, p. 383.
Janusar Bawar	Ditto,	1878, Pt. I, p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Gazi Khan ...	Ditto,	1886, Pt. I, p. 48
The Scheduled Districts of the Central Provinces	Ditto,	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam	Ditto,	1898, Pt. I, p. 870
The District of Sylhet	Ditto,	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills)	Ditto,	1897 Pt. I, p. 299.

It has been declared, by notification under s. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul—see *Gazette of India*, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the same Act, to the following Scheduled Districts, namely:—

The North-Western Provinces	
Tarai	See <i>Gazette of India</i> , 1876, Pt. I, p. 505.
Ajmere and Merwara... ..	Ditto, 1877 Pt. I, p. 605.

It has been repealed as to carriers by rail by the Indian Railways Act, 1 (IV of 1879). [For the Indian Railways Act now in force, see Act IX of General Acts, Vol. V. p. 40.]

Carriers by sea are not common carriers *K. Kumbhar v. B. I. S. N. & Co.*, 38 Mad. 941.

A licensee of a ferry is in the position of a common carrier. *Maung Po. Tau v. Maramdi* 50 Ind. Cas. 562.

Carriers by sea in India are not entitled to the benefits of Act III of 1865 *Boggiano v. The Arab Steamers Ltd.*, 8 Bom. L. R. 126; 33 Ind. Cas. 536.

Rights and liabilities of carriers.—The rights and liabilities of the common carrier in India are outside the Indian Contract Act and are governed by the principles of the English Common Law as modified by the Carriers' Act. *The British and Foreign Marine Insurance Co. v. Ind. Gen. and Steam Nav. and Ry. Co.* 38 Cal. 28.

"Person" "person" includes any association or body of persons, whether incorporated or not ¹:

Number. Words in the singular number include the plural and words in the plural include the singular. ²

3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorised in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof. ³

Value and description not declared.—Where goods of the description contained in the schedule referred to in S. 3 and exceeding in value Rs. 100 were lost owing to the negligence of a steamer Co. The company was held liable under s. 8 of the Act to make compensation to the consignor, although the value and description of the goods were not declared under s. 3 and the increased risk of carrying them was not paid for at higher rates under s. 4. The company was also held liable although the goods were delivered as "luggage" as the Act makes no distinction between "personal luggage" and goods as "merchandise." *The Ind. Gen. Nav. & Ry. Co. v. Gopal Chunder & Ann.* 17 Cal. W. N. 970=41 Cal. 80. *Velayet Hoosain v. B. & N. W. Ry. Co.* 36 Cal. 319 Dist.) *Assa Nand v. Ind. Carriage Co.* 13 P. R. 1866 followed. *Ashton & Co. v. London & N. W. Ry. Co.* (1918) 1 K. B. 488.

1. Cf. definition in s. 3 (39) of the General Clauses Act, 1897 (X of 1897) General Acts, Vol. VI.

2. Cf. s. 13 (2) of Act X of 1897.

3. The earlier sections extend to India the principle embodied in the Carriers Act, 1830. (11 Geo. IV & 1 Wm. IV, c. 68). See Statement of Objects and Reasons quoted on page 662.

4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix:

For carrying such property, payment may be required at rates fixed by carrier.

Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of

Proviso.

charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

5. In case of the loss or damage to property exceeding in value one hundred rupees and of the description aforesaid delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid

The person entitled to recover in respect of property lost or damaged may also recover money paid for its carriage.

to such carrier in consideration of such risk as aforesaid.

6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act XXII of 1863 (to provide for taking land for works of public

In respect of what property liability of carrier not limited or affected by public notice, Carriers, with certain exceptions may limit liability by special contract.

utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken) may by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

Special clause excluding liability for short delivery:—Where in a bill of lading there is this special clause "*goods within mentioned have not been tallied and it is agreed that neither the shippers nor the receivers of cargo have any claim under this bill of lading for shortage*" and the bill is accepted by the shipper, he cannot maintain an action against the shipping company for damages for short delivery on the plea that the clause was not properly brought to his notice. *British Ind. S. Nav. Co. v. Krishna Swami Aiyar* (1921) 62 Ind. Cas. 709.

A common carrier by sea can, according to the Law of India, contract out of his Common Law liability for the negligence of himself or of his servants,

1. See now the Land-Acquisition Act, 1894 (I of 1894) s. 2 [General Vol. VI].

subject to the proviso that the condition must be expressed in clear, express and unambiguous language, *B. I. S. N. Co. v. Allibhai* (F. B.) 62 Ind. Cas. 372.

Limitation of Liability.—The effect of ss. 6, 8 and 9 of Act III of 1863 is that the liability of a common carrier for the loss of goods, not being of the description contained in the schedule to the Act may be limited by special contract signed by the owner save where such loss shall have arisen from the negligence or criminal acts of the carrier or any of his agents or servants.

It has been the policy of the English Courts in dealing with exemption clauses to recognise the distinction between the insurance risks and the carrying risk of a common carrier, and to construe them as not extending to carrying risks in the absence of clear words to that effect. In India where there is a statutory prohibition against exempting a carrier from loss arising from negligence or criminal acts, there is perhaps an even stronger reason for adopting the canon of construction, at any rate, within the limits implied by this prohibition, *British and Foreign Marine Insurance Co. v. Ind. Gen. and Nav. and Ry. Co.*, 35 Cal. 28. *Maung Po. Taw v. Harandi* = 50 Ind. Cas. 562.

7. ¹ The liability of the owner of any railroad or tramroad constructed

Liability of owner of railroad or tramroad constructed under Act XXII of 1863, not limited by special contract. In what case owner of railroad or tramroad answerable for loss or damage.

under the provisions of the said Act XXII of 1863, for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any special contract; but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence

or a criminal act on his part or on that of his agents or servants.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss or or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from criminal act of the carrier or any of his agents or servants, "and also shall be liable to the owner for loss or damage to any such property, other than property to which the provisions of section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants." (added by Act XIII of 1921).

Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent

Liability of Steamship Company for loss during carriage.—A Ry. Co. entered into a contract with the ptf. for the carriage of certain goods to a

1. This section was added by the Indian Carriers Act, 1899 (X of 1899).
s. 2. The original section was repealed by Act IX of 1890.

port & thence to England. Owing to a breach in the Ry. line, the goods had to be transported by river and in steamers & flats belonging to a steamship Co. under an agreement with the Ry. Co. While the goods were in a vessel of the steamship Co, a fire broke out and about $\frac{1}{4}$ of the goods were destroyed. Held that though there was no contract between the steamship Co. & the plff. the Company was nevertheless liable as a common carrier for the loss incurred by the plff. *Dekhari Tea Co. v. The Assam Bengal Ry. Co. Ltd.* (1920) 57 Ind. Cas. 406; 23 Cal. W. N. 998; 47 Cal. 6.

A common carrier, unless he is protected by a special contract or by statute, is liable as the insurer of goods *i.e.* he is responsible for every injury to the goods occasioned by any means whatever except only by the Act of God and the King's Enemies, *Maung Pa. Taw v. Haramdi Missay* 50 Ind. Cas. 562.

9. In a suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.

Plaintiff, in suits for loss, damage, or non-delivery, not required to prove negligence or criminal act

Onus.—This section clearly shows that the onus of proving negligence is not upon the plaintiff. *Ind. Gen. Nav. and Ry. Co. v. Gopal Chunder and Anr.* 41 Cal. 80.

Under s. 9 of the Carrier's Act, in a suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it is not necessary for the plff. to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents. The burden of proof of absence of negligence is thus thrown upon the common carrier, on the theory that the loss or damage to the goods is *prima facie* proof of negligence. Where evidence has been given, on both sides of the circumstances under which the loss took place and the court has arrived at a finding upon the whole of such evidence, the question of burden of proof ceases to have any practical importance. *Central Cachar Tea Co. v. R. S. N. Co.* 24 Cal. 787 p. 791; *Indian G. S. N. & Ry. Co. Ltd. v. The Eastern Assam Co. Ltd.* (1921) 61 Ind. Cas. 14; 47 Cal. 1027.

Negligence is the effective cause of an injury when it has in fact brought about that injury as a direct and natural consequence. When negligence has been established liability follows for all the consequences which are in fact the direct and natural outcome of it, whether the injury is a consequence that was foreseen or not.

The act complained of, must have some proper connection as a cause with the damage which followed as its effect. But a negligent act may be the effective cause of an injury though it may not be proximate in time, if it

particular incident in a chain of events which has in fact led to the injury, that is, if it is the real cause of a subsequent accident.

Neither lapse of time nor distance in space is the essentially controlling or decisive element in the solution of the question whether a certain cause is or is not the proximate cause.

The sequence of events is not broken by the intervention of an act of nature occurring while the resulting operation of the wrongful Act or neglect is effective.

As a general rule, where goods entrusted to a carrier are not delivered according to the contract, the measure of damages is the value of the goods at the place of destination, in the condition in which the carrier undertook to deliver them, at the time when they should have been delivered, less the proper charges of transportation & delivery, if these have not been paid by the consignee. *Brandt v. Bowlby* (1831) 2 B. & Ad. 932.

The party wronged by the breach of obligation should be awarded compensation for the losses which he has sustained in consequence and should be placed in the same position pecuniarily as if the contract had been performed, is subject to important limitations, and compensation is not in fact recoverable for every loss or detriment which may be traceable as a consequence, however remote, of the breach of obligation. (*Warthiem dicontini Pulp Co.*) (1911) App. Cas. 301.

The natural and probable consequence of the failure of the carrier to deliver the goods at the time and place they should have been delivered, is *prima facie* a loss to the owner amounting to the value of the goods at that point. But this ordinary and definite effect of the failure of the carrier may be aggravated in a particular case by special circumstances, such as, the intention of the consignee to sell the goods in the most profitable market in the world. The aggravation of the normal consequences is not to be taken into account, except so far as the circumstances to which they are due, were the ordinary probable circumstances which might beforehand be expected to attend or follow upon the breach of obligation. This is subject to the exception that if the party, who has broken the contract, entered into it, in contemplation of special circumstances which would affect the consequences of a breach and accepted those circumstances as condition under which the contract was to be performed he is liable for any special loss which may have resulted.

The knowledge must be brought home to the party sought to be charged under such circumstances that he must know that the person he contracts with reasonably believes that he accepts the contract with the special condition attached to it. *British Columbia Saw Mill Co. Nettleship* L. R. 3. C. P. 509
a party cannot be allowed compensation for losses which might have been

reasonably avoided. *Itlenhiem* (1885) 10 P. D. 167. *India General Navigation & Railway Co. Ltd. v. Eastern Assam Co. Ltd.* (1921) 33 Cal. L. J. 72.

Action for non delivery of goods:—In the case of continuous carriers, the authorities establish (1) That where goods have to be carried with the aid of different transport agencies in order to arrive at the destination to which they are booked, the carrier with whom the contract is made at one end is, in the absence of any contract limiting his liability to his own transport system, liable for the loss or destruction of the goods on portions beyond his own system or in consequence of acts or defaults of persons other than his own servants.

(2) That in the absence of a contract to the contrary, the consignor cannot hold the company with whom he does not contract liable for damages when all that can be complained of is non-feasance though such company may be liable in tort for breach of duty arising from the mere fact that it has undertaken the liability of carrying goods or property belonging to another.

(3) When there is an agreement between two companies, the effect of which is to constitute one Company the Agent of the other and the traffic is carried for the joint benefit of both the companies, either company may be sued at the option of the consignor.

The carrier means a person or company who undertakes to transport the goods of another person from one place to another for hire. *Mylappa v. British Steam Navigation Co. Ltd.* 34 M. L. J. 553; 45 Ind. Cas. 485.

10. No suit shall be instituted against a common carrier for the loss of, or injury to, goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.

Notice of loss or injury
to be given within six
months.

Notice of claim.—Under this section notice of loss must be given to the carrier by the plaintiff before suit; knowledge of the loss derived *alunde* by the carrier is not sufficient. *British and Foreign Marine Insurance Co. v. Ind. Gen. and S. Nav. and Ry. Co.*, 38 Cal. 50; *River S. N. Co. Ltd. v. Hazarimal* 41 Ind. Cas. 919. 17 Cal. L. J. 294.

A condition in a bill of lading regarding the service of notice of claim in respect of the contract at the carrier's office at a particular place, is not inconsistent with the provisions of s. 10 of the Carrier's Act and is perfectly legal. *River S. N. Co. v. Hazari Mal.* 41 Ind. Cas. 919.

This section places a Steamship Co. in the same position as a railway and makes it obligatory upon a person wanting to sue such a Steamship Co. to give a notice of such suit within the time mentioned in the section. *River Nav. Co., Ltd. v. Kashi Prasad*, 8 Cal. L. J. 192.

Limitation—Suit must be brought within one year from the time when the goods ought to be delivered under art 31 of the Limitation Act. *Haji Ajam v. Bombay & Persia Steam Navigation Co.* 4 Bom. L. R. 447.

11. The Governor General in Council may by notification in the Gazette of India, add to the list of articles contained in the schedule to this Act, and the schedule shall, on the issue of any such notification, be deemed to have been amended accordingly. (added by Act XIII of 1921).

—•••— SCHEDULE.

(1) Gold and silver coin. (2) Gold and silver in a manufactured or unmanufactured state. (3) Precious stones and pearls. (4) Jewellery. (5) Time-pieces of any description. (6) Trinkets. (7) Bills and hundis. (8) Currency notes of the Government of India, or notes of any Banks, or securities for payment of money, English and Foreign. (9) Stamps and stamped paper. (10) Maps, prints, and works of art. (11) Writings. (12) Title-deeds. (13) Gold or Silver plate or plated articles. (14) Glass. (15) China. (16) Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials. (17) Shawls and lace. (18) Cloths and tissues embroidered with the precious metals or of which such metals form part. (19) Articles of ivory, ebony or sandal wood.

—•••••— 42 & 43 Vict. C. 41.

An Act to enable Guaranteed Railway Companies in India and the Secretary of State for India in Council to enter into agreements with respect to the working of Railways, and with respect to telegraphs, and to confer upon those companies additional powers with respect to their undertakings.

[11th August 1879]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Interpretation.

1. In and for the purposes of this Act—

The term "guaranteed company" means any of the companies specified in the schedule to this Act, and any Railway Company which for the time being contracts, maintains, or works a railway under any guarantee from or arrangement with the Secretary of State for India in Council.

The term "Railway Company" includes any person or body of persons being the owner or lessee of or working a railway, except the East Indian Railway Company, and except any Railway Company of which the undertaking is after the passing of this Act purchased by the Secretary of State for India in Council.

The term "railway" means a railway constructed before or after the passing of this Act, and belonging to the Secretary of State for India in Council, or situate in Her Majesty's territories in India, or in any territory of the East Indies belonging to any native prince or state in alliance with Her Majesty or to any European power, and includes any tramway so belonging or situate and worked by steam power, and any ferry so belonging or situate and worked or used in connexion with a railway.

2. A guaranteed company may from time to time make with the Secretary of State for India in Council, and carry into effect, or, with the sanction of the Secretary of State for India in Council, make with any Railway Company, and carry into effect, any agreement with respect to any of the following purposes; namely:—

- (a) The working, use, management, and maintenance of any Railway or part of a railway:—
- (b) The supply of rolling stock and machinery necessary for any of the purposes hereinbefore mentioned, and of officers and servants for the conduct of the traffic of any such railway or part:—
- (c) The payments to be made and the conditions to be performed with respect to such working, use, management, and maintenance:
- (d) The interchange, accommodation, and conveyance of Traffic on, coming from, or destined for respective railways of the contracting parties, and the fixing, collecting, apportionment and appropriation of the revenues arising, from that traffic:
- (e) Generally the giving effect to any such provisions or stipulations with respect to any of the purposes hereinbefore mentioned as the contracting parties may think fit and mutually agree on.

3. A guaranteed company may from time to time make with the Secretary of State for India in Council, and carry into effect, any agreement with respect to any of the following purposes: namely,—

- (a) The surrendering, selling, or letting by the company to the Secretary of State of all or any part of the telegraphs belonging to the company:
- (b) The doing of any thing connected with the working, use, management, or maintenance of or otherwise relating to any telegraphs in India which belong to the Secretary of State in Council or a guaranteed company, or in which the Secretary of State in Council or any such company is for the time being interested, including the application of the revenue to arise from any such telegraphs.

- (c) Generally the giving effect to any such provisions or stipulations with respect to any such telegraphs as the Secretary of State in Council and any such company may think fit and mutually agree on.

4. A guaranteed company may from time to time, with the sanction of the Secretary of State for India in Council, exercise all or any of the following powers:—

Additional power of
guaranteed company.

- (a) They may use, maintain, farm, or work and take tolls in respect of any bridge or ferry used in connexion with their railway:
- (b) They may construct, use, maintain, and take tolls in respect of any road in connexion with a railway bridge:
- (c) They may provide any means of transport which may be required for the reasonable convenience of persons or goods carried or to be carried on their railway, but not between any places between which any company shall for the time being be carrying on the business of carriers by water. Provided always, that the capital outlay on the works mentioned in the three preceding sub-sections shall not in the case of any guaranteed company exceed in all ten lacs of rupees:
- (d) They may make and carry into effect agreements with the Secretary of State for India in Council for the construction of rolling stock, plant, or machinery used on or in connexion with railways, or for leasing or taking on lease any rolling stock, plant, machinery or equipments required for use on a railway.

A guaranteed Company shall have, for the purpose of recovering any tolls which they are authorized to take under this section, such powers as may be conferred upon them by laws and regulations made by Governor-General of India in Council.

5. The Secretary of State for India in Council may from time to time, with respect to any case or class of cases, delegate to the Governor General of India in Council the power to give any sanction required under this Act.

Secretary of State may
delegate to Governor
General right of sanction
under this Act.

6. The powers conferred by this Act shall be in addition to and not in derogation of any powers existing independently of this Act.

Powers of Act cumulative.

7. Any agreement made before the passing of this Act by a guaranteed company for any of the purposes, specified in this Act shall be as valid as if it had been made after the passing of this Act.

Validation of past
agreements

Short title.

8. This Act may be cited as the Indian Guaranteed Railways Act, 1879.



SCHEDULE.

The Great Indian Peninsular Railway Company.
 The Madras Railway Company.
 The Bombay, Baroda, and Central India Railway Company.
 The Scinde, Punjab, and Delhi Railway Company.
 The Eastern Bengal Railway Company.
 The South Indian Railway Company.
 The Oudh and Rohilkund Railway Company (Limited).

Sindh-Pishin Railway Act, No. XI of 1887.

(Received the assent of the Governor-General on
 25th February 1887.)

*An Act to provide for the Regulation of Traffic on the Sindh-Pishin
 Section of the North-Western Railway.*

WHEREAS it is expedient that "The Indian Railways Act, 1879", should apply in its entirety to that part of the Sindh-Pishin section of the North-Western Railway which lies beyond the Province of Sindh (a) it is hereby enacted as follows:—

Title, extent and commencement. 1. (1) This Act may be called "The Sindh-Pishin Railway Act, 1887".

(2) It shall extend to all persons for whom the Governor-General in Council has power to make laws and regulations at meetings for that purpose; and

Definitions. (3) In the following sections of this Act, "Railway" means that part of the Sindh-Pishin section of the North-Western Railway which, whether completed at the commencement of this Act or not lies beyond the province of Sindh.

Application of Railway Act. 3. (1) Unless and until extended under this section, no portion of the Indian Railways Act, 1879, shall apply to any part of the Railway.

(2) The Governor-General in Council may, by notification in the *Gazette of India*, extend to the Railway or any part thereof such portions of that Act as he thinks fit.

(3) In extending any portion of that Act to the Railway or any part thereof, the Governor-General in Council may extend it, subject to such modifications as he thinks fit.

(a) The preamble to this Act was amended by Section 150 of the "Indian Railways Act, 1890" (IX of 1890).

Carriage of passengers
and property permissive
only.

4. (1) No person shall be entitled, as of right to be carried on the Railway or to have property carried thereon.

(2) But the carriage of passengers and property on the Railway shall be permitted, subject to such conditions and restrictions as the Governor-General in Council may prescribe.

5. Where any person or property is permitted to be carried on the Railway, the Government shall not be responsible for any injury which may happen to the person, or for any loss or damage, which may occur in respect of the property, unless the injury happens, or the loss or damage occurs, on a part of the Railway with respect to which the Governor-General in Council has, by notification in the *Gazette of India*, announced that the Government accepts responsibility, to such extent as may be described in the notification, for injury happening, or loss or damage occurring, thereon.

ACT No. X 1895.

INDIAN RAILWAY COMPANIES ACT, 1895.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the G.G.'s assent on the 7th March, 1895.

An Act to provide for the Payment by Railway Companies registered under the Indian Companies Act, 1882, of interest out of Capital during construction.

Whereas it is expedient to provide for the payment by Railway Companies registered under the Indian Companies Act, 1882, of interest out of capital during construction; It is hereby enacted as follows:—

Title, extent, and
commencement.

1. (1) This Act may be called the Indian Railway Companies Act, 1895.

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) "railway" means a railway as defined in section 3, clause 4, of the Indian Railways Act, 1890.

(2) "the railway" means the railway in relation to the construction of which interest out of capital is permitted to be paid as hereinafter provided; and

(3) "Railway Company" means a Company registered under the Indian Companies Act, 1832; and formed for the purpose of making and working, or making or working, a railway in India, whether alone or in conjunction with other purposes.

3. A Railway Company may pay interest on its paid-up share capital out of capital, for the period, and subject to the conditions and restrictions, in this section mentioned, and may charge the same to capital as part of the cost of construction of the railway:—

(1) Such interest shall be paid only for such period as shall be determined by the Governor-General in Council; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the railway shall be actually completed and opened for traffic.

(2) No such payment shall be made unless the same is authorized by the Company's memorandum of association, or by a special resolution of the Company.

(3) No such payment, whether authorised by the Company's memorandum of association or by special resolution as aforesaid, shall be made without the previous sanction of the Governor-General in Council.

(4) The amount so paid out of capital by way of interest, in respect of any period, shall in no case exceed a sum which shall, together with the net earnings of the railway during such period, make up the rate of four per cent. per annum.

(5) No such payment of interest shall be made until such Railway Company has satisfied the Governor-General in Council that two-thirds at least of its share capital, in respect whereof interest is to be so paid, has been actually issued and accepted, and is held by shareholders who, or whose representatives, are legally liable for the same.

(6) No such interest shall accrue in favour of any shareholder for any time during which any call on any of his shares is in arrear.

(7) The payment of such interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

4. A railway in course of construction and intended to be made or worked by a Railway Company in addition to or by way of extension of any railway owned or worked by such Company shall be deemed to be the railway of such Company for the purposes of this Act, and all the provisions of the last preceding section shall apply to such railway, and to the share capital issued for the purpose of its construction,

Provisions of section 3 applicable to additional share capital for extensions.

5. When a Railway Company has power to pay interest under this Act, Notice in prospectus and other documents. notice to that effect shall be given in every prospectus, advertisement, or other document inviting subscriptions for shares therein, and in every certificate of such shares.

6. When any interest has been paid by a Railway Company under this Act, the annual or other accounts of such Company shall Accounts. show the amount on which, and the rate at which, interest has been so paid.

7. If, by any memorandum of association, articles of association, or other document, any power of borrowing money is conferred on Construction of borrowing powers. a Railway Company, or on its Directors, with or without sanction of any meeting, and if such power of borrowing is limited to an amount bearing any proportion to the capital of such Company, the amount of capital applied or to be applied in payment of interest under this Act shall, for the purpose of ascertaining the extent of such power of borrowing, be deducted from the capital of such Company.

ACT No. IX OF 1897.

(As amended by Act XIV of 1919).

THE PROVIDENT FUNDS ACT, 1897.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the assent of the Governor-General on the 11th March 1897.

An Act to amend the law relating to Government and other Provident Funds.

Whereas it is expedient to amend the law relating to Government and other Provident Funds; It is hereby enacted as follows:—

Title, extent, and commencement.

1. (1) This Act may be called the Provident Funds Act, 1897.

(2) It extends to the whole of British India, including Upper Burma and British Baluchistan; and

(3) It shall come into force at once.

Definitions

2. In this Act—

(1) "Provident Fund" means a fund in which the subscriptions or deposits of any class or classes of employees are received and held on their individual accounts, and includes any contributions credited in respect of any interest accruing on, such subscriptions or deposits under the rules of the Fund;

(2) "Government Provident Fund" means a Provident Fund constituted by the authority of the Government for any class or classes of its employees or for teachers in educational institutions. (as amended by act XIV of 1919).

(3) "Railway Provident Fund" means a Provident Fund constituted by the authority of the Government of India or of any company which administers a railway or tramway in British India, either under a special Act of Parliament or under contract with the Secretary of State in Council or the Government of India, for any class or classes of the employees on, or in connection with, such railway or tramway; and

(4) "compulsory deposit" means a subscription or deposit which is not repayable on the demand, or at the option, of the subscriber or depositor and includes any contribution which may have been credited in respect of, and any interest or increment which may have accrued on, such subscription or deposit under the rules of the Fund.

Right of a creditor:—By virtue of s. 4 of the Provident Funds Act, neither the Receiver nor the creditors of an insolvent have any right to money drawn by the insolvent from his compulsory deposit in a Railway Provident Fund. There can, therefore, be no fraudulent dealing in respect of such money such as is made punishable by s. 43 of The Provincial Insolvency Act, *Nagindas v. Ghelabhai* 44 Bom. 673; 56 Ind. Cas. 450.

Provident Fund remitted through Post office whether attachable:—Money remitted by money order through the Post Office does not cease to be the property of the remitter until it is actually paid to the remitee. Therefore, money standing to the credit of person in the Railway Provident Institution as a compulsory deposit does not lose its character as such by the mere fact of its being remitted by money order to the depositor, and it retains that character until it is actually delivered to the depositor. *W. Chance v. Bisw Nath* 52 Ind. Cas. 925; 12 Bur. L. T. 105.

3. (1) When a subscriber to, or depositor in, any Government or Railway Provident Fund dies, and the sum standing to his credit in the books of the Fund does not exceed two thousand rupees, the officer or person whose duty it is to make payment of such sum may pay it as follows:—

Payment from Government or Railway Provident Fund on death of subscriber or depositor

(a) he may pay it to any person entitled to receive it according to the rules of the Fund or, in the absence of any rule of the Fund to the contrary, to any person nominated in writing by the deceased subscriber or depositor to receive it;

(b) in any case not hereinbefore provided for, he may pay it to any person appearing to him to be entitled to receive it.

(2) The provisions of sub-section 1 shall apply to any such sum which, at the commencement of this Act, stands to the credit of any subscriber or depositor already deceased.

(3) Nothing in this section shall affect the validity of the rules of any Fund in so far as such rules may provide for the disposal of sums exceeding two thousand rupees.

4. (1) Compulsory deposits in any Government or Railway Provident Fund shall not be liable to any attachment under any decree or order of a Court of Justice in respect of any debt or liability incurred by a subscriber to, or depositor in, any such Fund, and neither the Official Assignee nor a Receiver appointed under Chapter XX of the Code of Civil Procedure shall be entitled to, or have any claim on, any such compulsory deposit.

(2) Any sum standing to the credit of any subscriber to, or depositor in any such Fund at the time of his decease and payable under the rules of the Fund or under this Act to the widow or the children, or partly to the widow and partly to the children, of the subscriber or depositor, or to such person as may be authorized by law to receive payment on her or their behalf, shall vest in the widow or children, or partly in the widow and partly in the children, as the case may be, free from any debt or other liability incurred by the deceased, or incurred by the widow or by the children or by any one or more of them, before the death of such subscriber or depositor. (Substituted by the Act No. IV of 1903).

5. No suit or other legal proceeding shall lie against any person in respect of anything done or in good faith intended to be done in pursuance of the provisions of this Act.

6. The Local Government may, in its discretion, by notification, in the official Gazette, extend the provisions of this Act to any Provident Fund established for the benefit of its employees by any local authority within the meaning of the Local Authorities Loan Act, 1879.

7. Nothing in Section 3 shall apply to money belonging to the estate of any European officer, non-commissioned officer, or soldier dying in His Majesty's service in India, or of any European who at the time of his death was a deserter from such service.

The Indian Railway Boards Act.

ACT IV OF 1905.

Received the Assent of the Governor-General on the 22nd March 1905.

An act to provide for investing the Railway Board with certain powers or functions under the Indian Railways Act, 1890.

Whereas a Railway Board has been constituted for controlling the administration of railways in India, and it is expedient to provide for investing such Board

with certain powers or functions under the Indian Railways Act, 1890; it is hereby enacted as follows:—

Short title and construction. (1) This Act may be called the Indian Railway Boards Act, 1905; and

(2) It shall be read with, and taken as part of, the Indian Railways Act, 1890.

Investment of Railway Board with powers under Indian Railways Act, 1890. 2. The Governor-General in Council may by Notification in the Gazette of India, invest the Railway Board, either absolutely or subject to conditions:—

(a) With all or any of the powers or functions of the Governor-General in Council under the Indian Railways Act, 1890, with respect to all or any railways, and

(b) With the power of the officer referred to in Section 47 of the said Act to make general rules for railways administered by Government.

Notification.—Investiture of Railway Board with certain power and functions of the Governor-General in Council under the Railways Act, 1890 (IX of 1890).

No. 801, dated the 24th March 1905.—In exercise of the powers conferred by Section 2 of the Indian Railway Boards Act 1905 (IX of 1905) as in force in British India and as locally applied by Foreign Department Notification No. 1097-F, of this date the Governor-General in Council is pleased:—

(1) To invest the Railway Board with all the powers or functions of the Governor-General in Council under Section 4, 5, 7, 9, 11 to 14 (both inclusive) 16 to 19 (both inclusive), and 22 to 35 (both inclusive), Section 47 sub-sections (3) and (4), Sections 48, 52 to 55 (both inclusive), 62 and 63, Section 83, Clause (e) Section 84, Section 85, Section 97, sub-section (3), Section 143 and Schedule II, Clause (8) of the Indian Railways Act, 1890, (IX of 1890), with respect to all Railways subject to the following conditions, namely:—

(a) that the Railway Board shall in the exercise of any of the said powers or functions, be subject to the control of the Governor-General in Council;

(b) that the exercise of powers or functions under Section 7, Section 9 or Section 11 shall not entail any expenditure in excess of the general powers of sanction exercisable by the Railway Board; and

(c) that the Railway Board shall exercise the powers conferred by Section 143, sub-sections (2) sub-section (3) in respect only of (i) rules made by themselves and (ii) rules made by the Governor-General in Council before the date of this Notification in exercise of any power with which the Board is invested by this Notification; and

(2) To invest the Railway Board with the power of the officer referred to in Section 47 of the said Indian Railways Act, 1890 to make general rules for railways administered by the Government.

[See Gazette of India, 1905 Pt. I, p. 232]

Notification.—Investing the Railway Board with all the powers of the Governor-General in Council in respect to agreements for joint working of Railway Stations.

1. In exercise of the powers conferred by Section 2 of the Indian Railway Boards Act, 1905 (IV of 1905) as in force in British India and as locally applied by Foreign Department Notification No. 1097-F, dated the 24th March 1905 and in supersession of the Notification in the Department of Commerce and Industry, No. 5814—Railways dated the 25th July 1906, the Governor-General in Council is pleased to invest the Railway Board with all the powers or functions of the Governor-General under Section 50, Clause (d) of the Indian Railways Act 1890 (IX of 1890) subject to the condition that the Railway Board shall, in exercise of the said powers or functions, act in accordance with the general rules or orders on the subject passed from time to time by the Government of India.

[See Gazette of India, 1905 Pt. I, p. 335]

Notification.—Investing Railway Board with powers of Governor-General regarding agreements as to rolling stock.

No. 9940, dated the 17th December 1906.—In exercise of the powers conferred by Section 2 of the Indian Railway Boards Act, 1905, (IV of 1905) as in force in British India and as locally applied by Foreign Department Notification No. 1097 F, dated the 24th March 1905, the Governor-General in Council is pleased to invest the Railway Board with all the powers or functions of the Governor-General in Council under Section 49 of the Indian Railways Act, 1890 (IX of 1890) in the matter of agreements with Railway Companies for the construction of rolling stock, plant or machinery used on, or in connection with, railways, or for leasing or taking on lease any rolling stock, plant, machinery or equipments required for use on a railway, or for the maintenance of rolling stock, subject to the condition that the Railway Board shall, in the exercise of the said powers or functions, act in accordance with the general rules or orders on the subject passed from time to time by the Government of India.

[See Gazette of India, 1906 Pt. I, p. 927]

3. Any notice, determination, direction, requisition, appointment, expression of opinion, approval or sanction to be given or signified on the part of the Railway Board, for any of the purposes of, or in relation to, any powers or functions with which it may be invested by notification under S. 2, shall be

Mode of signifying communications from the Railway Board.

sufficient and binding if in writing signed by the Secretary to the Railway Board, or by any other person authorised by the said Railway Board to act in its behalf in respect of the matters to which such authorities may relate; and the said Railway Board shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in manner aforesaid.

APPENDIX E.

The following rulings, though not falling under any particular section of this Act, may be usefully referred to in connection with Railways.

Interpretation of statutes.—A General Act should not be construed as repealing a special one, which is directed towards a special object or special class of objects. *In Re Chidambara Chetty* (1921) Mad. W. N. 188; 61 Ind. Cas. 991.

Action whether maintainable by Master for injuries to servant.—

(1) A master cannot maintain an action against a railway company for injury to his servant, whilst a passenger on the railway, caused by neglect of their duty to carry safely unless the master was a party to the contract. *Alton v. Midland Ry.* 19 C. B. (N. S.) 213; 34 L. J. C. P. 292. Nor can he maintain an action for injuries which caused the immediate death of his servant. *Osborn v. Gillett* 42 L. J. Ex. 53. *Taylor v. M. & S. L. Ry.* (1895) 1 Q. B. 134-141.

(2) The train in which the servant travelled came into collision with a train of the defendant company through the negligence of the defendant's signal man and the servant was hurt whereby the plaintiff lost his services and was damaged, Held, that the claim was, independent of the contract of carriage, for a pure tort and could therefore be maintained. *Berringer v. G. E. Ry.* 48 L. J. C. P. 400.

Action must have been maintainable by the deceased.—(1) The 9 & 10 Vict. C. 93 gives to the personal representative of the person killed by the wrongful act, neglect or default of another, not an independent cause of action, but a right of action, when there was a subsisting cause of action at the time of the death.

To a declaration on that statute, accord and satisfaction with the deceased in his life time is a good plea. *Read v. G. E. Ry.* 9 B. & S. 714; 37 L. J. Q. B. 278. *Senior v. Ward* 1 El & El 385; 28 L. J. Q. B. 139.

(2) An action on the above statute can only be maintained where the deceased could have maintained the action if alive; therefore, if in an action where death is alleged to have been caused by the negligence of the defendant's servants, it is shewn that the deceased, by his own negligence and carelessness, contributed to the accident, the defendant will be entitled to a verdict. *Tucker v. Chaplin* 2 Car. and K. 730; *Coyle v. G. N. Ry.* 20 L. R. Ir. 409. *Wright v. Midland Ry.* 51 L. T. 539

(3) In an action by a father for the death of his son (who was fourteen years of age at the time of the occurrence) it did not appear that the plaintiff had ever received from the deceased benefits or services which could in any sense be regarded as of pecuniary value. The child, however, was up to the time of his death

strong, intelligent and well disposed boy; that he was receiving education for mercantile pursuits; and that in a few years, if he had lived, his services would have been worth a substantial salary in the plaintiff's own shop or a similar establishment. The plaintiff himself was a respectable tradesman and his position rendered him independent of any earnings which his son might have been afterwards competent to gain. Held that there was no evidence to enable jury to say it was reasonably probable that pecuniary benefits would have resulted to the father from the continuance of the life of the child and that the defendants were not liable. *Bourke v. Cork & Maunsm Ry.* 4 L. R. Ir. 682. The principle upon which damages are to be assessed is that of a loss of which a pecuniary estimate can be made, and that compensation in the form of a *solatium* could not be given; that the pecuniary advantage was not to be confined to one for which the deceased would have been legally liable, but might be one of which the claimant had a reasonable expectation. The plaintiff laid the damages at Rs. 77,500. The court, however, under the circumstances of the case allowed Rs. 6,500 as the fair amount of damages. *Ratanbhai v. G. I. P. Ry.* 8 Bom. II. C. O. C. J. 130; *Sorabji v. G. I. P. Ry.* 7 Bom. II. C. O. C. J. 119.

(1) In an action under act XIII of 1855, no sum can be awarded in respect of funeral expenses, whether for removal or disposal of the body or for outlay for ceremonial or obsequial purposes. *Narayan Jetha v. Municipal Commissioner of Bombay*, 16 Bom. 254.

(5) Damage of a pecuniary nature must be shown but the damages are not to be given merely in reference to the loss of a legal right; they should be calculated in reference to a reasonable expectation of pecuniary benefit, as of right or otherwise from the continuance of the life of the deceased. *Franklin v. S. E. Ry.* 3 H. & N. 211. *Sykes v. N. E. Ry.* 41 L. J. C. P. 191.

(6) Legal liability alone is not the test of injury in respect of which damages may be recovered; but the reasonable expectation of pecuniary advantage by the relation remaining alive may be taken into account, and damages may be given in respect of that expectation being disappointed and the probable pecuniary loss thereby occasioned. *Dalton v. S. E. Ry.* 4 C. B. (N. S.) 296. *Condon v. G. S. & W. Ry.* 16 Ir. C. L. R. 415.

(7) In an action brought for the benefit of the father of the deceased, it was shown that the father was fifty-nine years of age, was nearly blind and injured in his legs and hands and was not able to work; that the son used to contribute to his support; Held that there was evidence of pecuniary injury to the father from the son's death. *Hetherington v. N. E. Ry.* 51 L. J. Q. B. 495. *Pryn v. G. N. Ry.* 4 B & S. 396.

(8) Damages are not to be estimated according to the value of the deceased's life calculated by annuity tables but what is a fair compensation shall be considered;

and also whether the circumstances are such that if the deceased, instead of meeting his death, had been only wounded in consequence of the conduct of the defendant, he would have been entitled to damages for injury. *Armsworth v. S. E. Ry.* 11 Jur. 758. *Wolfe v. G. N. Ry.* 26 L. R. Ir. 548. *Rowley v. L. & N. W. Ry.* 42 L. J. Ex. 153.

(9) The plaintiff's father and step mother were killed simultaneously in a railway accident which occurred through negligence of the defendants. An action for the loss of the plaintiff's father had been instituted by her paternal grandmother in which a verdict for £100 was obtained; but 1 S. only was allocated to the present plaintiff who sued for the death of her stepmother. The parties were persons in humble life. Held that there was no evidence of pecuniary loss by the death of the step mother. *Johnston v. G. N. Ry.* 26 L. R. Ir. 691. *Harrison v. L. & N. W. Ry.* 1 Cab. & E. 540.

(10) *Deducting Insurance Policy.*—In estimating the damages for the death of a relative killed by the wrongful act, neglect or default of another person, the amount of the life insurance left by the deceased should be deducted from the amount of damages. *Hicks v. Newport Abergaveny and Hereford Ry.* 4 B. & S. 403. *Grand Trunk Ry. of Canada v. Jennings* 58 L. J. C. P. 1; 13 App. Cas. 800.—*contra—Bradburn v. G. W. Ry.* 44 L. J. Ex. 9.

Assault-arrest-false imprisonment-liability of company.—(1) If a servant of a railway company commits an assault by the authority of the company, an action for assault and battery may be maintained against the company. *Eastern Counties Ry. v. Broom* 6 Ex. 314; 20 L. J. Ex. 196.

(2) The plaintiff came to the station when a train was shortly about to start, and having entered the ticket office, asked the clerk issuing tickets for a ticket but did not get or pay for one, and a person outside the office called the plaintiff but, as the train was about to leave the platform, and, as the plaintiff was leaving the ticket office, the ticket clerk erroneously believing that he had seen a ticket in plaintiff's hand, detained him, asked him for the ticket, and searched him and subsequently charged him with having stolen a ticket. In an action by the plaintiff against the railway company for assault and false imprisonment; held, that there was evidence of their liability for the acts of their servants. *Van den Eynde v. Ulster Ry.* Ir. R. 5 C. L. 6.

(3) A passenger was ejected from a railway carriage by the railway company's servant without excessive violence under an erroneous supposition that he was travelling wrongfully in the carriage. Held that what was done was within the scope of the servant's authority and the company was responsible. *Lowe v. G. N. Ry.* 62 L. J. Q. B. 524; *Bayley v. M. S. & L. Ry.* 42 L. J. C. P. 78; *Buck v. L. & N. W. Ry. Co.* Times, April 1880.

(4) A railway company is liable to an action for false imprisonment if it

act is committed by the authority of the Company *Goff v. G. N. Ry.* 3 El. & El. 672; *Furlong v. South London Tramway Co.* 1 Cab. & E. 316.

(5) An action for malicious prosecution will lie against a company *Steele v. Midland Ry.* 10 Ex. 352. A special constable of a railway company is the servant of the company and if in the course of his employment he arrest a person on suspicion of felony without having any reasonable grounds for his suspicion, an action for false imprisonment will lie against the company. *Lambert v. G. E. Ry.* (1909) 2 K. B. 776.

(6) A constable, who was also a servant of the railway company, after the conclusion of a scuffle in a station yard between some of the coy's servants and other persons, wrongfully gave A into custody on a charge of assaulting the servant of the company. By regulations of the company the constables were authorised to arrest any one they saw committing an assault in any of the stations, but this power was to be used with extreme caution. Held that the company was not liable, as the constable in giving A into custody was not acting within the scope of his employment. *Walker v. S. E. Ry.* 39 L. J. C. P. 346. *Barry v. Dublin Tramway Co.* 26 L. R. Ir. 150.

(7) B refused to leave a station yard and thereupon a struggle ensued between him and the servants of the company, during which he was wrongfully given in charge of a constable of the company. Held that the constable was acting within the scope of his employment (*ibid*)—and see *Lumsden v. L. & S. W. Ry.* 16 L. T. 609.

(8) If a foreman porter holding no implied authority, in the absence of the Station Master, gives in charge, on suspicion of stealing company's property, an innocent person, the company is not liable. *Edwards v. L. & N. W. Ry.* 39 L. J. C. P. 241. *Allen v. L. & S. W. Ry.* 40 L. J. Q. B. 55.

(9) A passenger, on refusal to pay additional fare on giving up his ticket for travelling beyond the station for which he had purchased ticket, was given into custody by the Inspector of railway. The charge of defrauding the Company was dismissed and in an action of trespass and false imprisonment brought by the passenger, it was held that the company was liable for the inspector's mistake. *Moore v. Metro Ry.* 42 L. J. Q. B. 23.

(10) A passenger refused to pay fare. He was thereupon taken into custody by a railway servant under the direction of a Superintendent and removed to the police station where he paid the money under protest and was released. Held in an action against the company for the arrest, that there was no evidence of authority for the arrest, or of subsequent ratification by them and that they were not liable. *Roe v. B. L. & C. J. Ry.* 7 Ex. 6 Railway Cas. 795.

(11) A Station Master, arrested and detained plaintiff for the non-payment of carriage of a horse conveyed by the defendant company, until it was ascertained

by telegraph that all was right. The railway company had no power to arrest for non-payment of carriage and it was held that the railway company were not liable as the station master in arresting the plaintiff did an act which was wholly illegal. *Poulton v. L. & S. W. Ry.* 3 B. & S. 616; L. R. 2 Q. B. 534. *Charleston v. London Tramway Co.* 36 W. R. 367.

ATTACHMENT.

(A) *Compulsory deposit by a Railway servant—liability of such contributions to be attached on the servant's leaving the Company's service.—Provident fund:—* The contribution which the employee of a Railway company makes towards the Railway Provident Fund, governed by the provisions of the Provident Funds Act (IX of 1897), is a "compulsory deposit" within the meaning of S. 4 of the Provident Funds Act, as amended by Act IV of 1903.

The deposit does not cease to be compulsory when the employee leaves the service of the company; since it was not, when made repayable on demand, and was, therefore, at that time a compulsory deposit; and having once acquired that character with the attendant consequences it continued to retain it.

A "compulsory deposit" of the above description does not become liable to be attached, on the subscriber's leaving the company's service.

Under S. 2 Cl. 4 of the Provident Funds Act, the expression "compulsory deposit" means a subscription or deposit which is not repayable on the demand or at the option of the subscriber or depositor and includes "any contribution which may have been credited in respect of and any interest or increment which may have accrued on, such subscription or deposit under the rules of the fund." *Veerschand v. B. B. & C. I. Ry.* 29 Bom. 259; *Doolis Devichand v. B. B. & C. I. Ry.* 29 Bom. 259; see also *Sheth Manna Lal v. Gainsford* 35 Cal. 641.

(B) *Deposit by servant of Railway Company:—*Where money deposited with a Railway Company by one of its servants as a guarantee for the due performance of his duties was attached by a judgment creditor of such servant under Section 266 of the Code of Civil Procedure. (Now s. 60 of the Civil Pro. Act V of 1908.)

Held that the creditor was not entitled to have his decree satisfied out of the deposit, but was entitled to a stop-order under Clause (c) of Section 268, and also to payment of the interest, if any, due by the company on such deposit to the servant. *Karunthan v. Subramanya* 9 Mad. 203.

(C) *Whether Official Assignee entitled to Sum due to an insolvent from a Provident Institution:—*A member of a Railway Provident Institution who had made compulsory deposits therein became insolvent and the usual vesting order was made under S. 7 of the Act for the Relief of Insolvent Debtors. By the rules of that Institution a member is to be paid, on his retirement from service, the sum of money standing to his credit. At the date of the vesting order, the Insolvent had not yet retired from service. Subsequent to the date of

vesting order, but before the retirement of the Insolvent, the Provident Funds Act, 1897, came into force, section 4 of which provides that after the commencement of that Act, the Official Assignee shall not be entitled to or claim any such compulsory deposits in any Railway Provident Fund. On a claim being made by the Official Assignee to the amount, on the ground that when the Act came into force, the interest of the Insolvent in the Fund had become vested in the Official Assignee.—Held that by Sec. 4 of the Provident Funds Act, all the right and title of the Official Assignee was determined as from the coming into operation of the Act, and that its operation was not limited to cases where the vesting order had been made after its commencement. *Official Assignee of Madras v. Mary Dalguerns* 26 Mad. 440; but the contrary view prevailed in *N. C. Maitland v. The B. B. & C. I. Ry. Co.* 7 Bom. L. R. 618 where it was held that "the words of S. 7 of the Indian Insolvency Act, cover the after acquired property of an Insolvent.

An Act is not to be deemed to be retrospective which takes away or impairs any vested right acquired under existing laws.

(D) *Gratuity*.—K, a servant in the employment of the E. I. Railway Company, was recommended by the Traffic Manager, a bonus in consideration of long and good services. The recommendation was sanctioned, and the amount of the bonus was received by the District Paymaster. Before payment to K, the money was attached in execution of a decree against him by J. Held, that in as much as the bestowal of the money was a gift of moveable property of date subsequent to the 1st July 1882, and was not evidenced by a registered instrument, it could only be effected by actual delivery: that as there had been no such delivery as completed the transfer, the money was not at K's disposal, and he could not have enforced payment; and that the money was therefore not liable to attachment in execution of a decree against him, *Jankidas v. E. I. Ry. Co.* 6 All. 624.

(E) A Company which is a going concern may use its funds in gratuities to Directors and Servants in a reasonable way with the view of getting better work in the future, but a company which is transferring its business to another company cannot use its funds in gratuities. *Hutton v. West Cork Ry. Co.* 23 Ch. D. 654 C.A.

(F) *Salary of Railway Servants*.—A Small Cause Court has no authority to attach the salary of a railway servant that has not yet fallen due by a prohibitory order issued to the officer whose duty it is to disburse the salary, when the disbursing office is situate outside the jurisdiction of the Court.

A disbursing officer who has so far submitted to such a prohibitory order as to recover and keep in deposit with him the portion of the salary attached, is not bound to pay the money into the Court which attached it without jurisdiction. *Abdul v. Albyn* 30 Cal. 713; *Sayadkhan v. Davies* 28 Bom. 198.

Attestation.—The word attested in Section 59 of Transfer of Property Act is the actual execution of the document by the person purporting to execute it.

Shamu Patter v. Abdul Kadir, 14 Bom. L. R. 1034 P. C. 20 Bom. L. R. 587-22 Bom. S6.

It is a sufficient acknowledgment by a testator of his signature to his will if he makes the attesting witnesses understand that the paper which they attest is his will even though they do not see him sign it. *Balmukunddass v. Bhagwandass*, 15 Bom. L. R. 209.

An admission of execution is sufficient proof as against the party making the admission and dispenses with the necessity for calling an attesting witness or giving any other evidence *Arjunchandra v. Kailaschandra* (1923) 27 Cal. W. N. 263 (22 Cal. W. N. 444 followed) *Execution of a document*:—Execution of a document means something more than the mere signing by the party. It must certainly include delivery, and it also includes signing in the presence of witnesses where witnesses are necessary. *Arjun v. Kailas* (1923) 27 Cal. W. N. 263.

Bhang-importation into British territory-Railway station in a Native State.—The applicant was charged with having imported *bhong* into the Presidency of Bombay, in as much a parcel containing *bhong* and bearing his name and address was received at Kalol, a railway station in a Native State. It appeared that the criminal jurisdiction along the line of railway was ceded to the Government of India, but there had been no cessation of territory:—*Held*, that no offence was committed unless the importation was into the Presidency of Bombay, that is, into territories which formed part of British India; and if the land upon which the offence was alleged to have been committed had not actually been ceded, it could not form part of British India. *Emperor v. Raghunathrao* 5 Bom. L. R. 873.

Building contract-penalty-original time for performance-extra work given-Forfeiture of amount.—In the case of building contracts, if the building owner has ordered extra work beyond that specified by the original contract which has necessarily increased the time requisite for finishing the work, he is thereby prevented from claiming the penalties for non-completion provided by the contract.

If the extra work is not one which the contractor is bound to undertake but which he nevertheless undertakes and if such extra work cannot be regarded as a separate and independent work but is one connected with the work originally stipulated for, the offer and the acceptance of such additional work will by necessary implication, operate as a variation of the original contract as to the time therein fixed for the completion of this work. If the extra work is an independent work, unconnected with the contract, then there can be no variation by implication of the original contract as to time.

The term fixed in a contract for its completion must, in the absence of a contract to the contrary be taken to be with reference to the work specified in the contract and not with reference to unspecified extra work which might be ordered under the contract.

When a contract which consists in the doing of certain work is not indivisible but severable, each of the works therein referred to being itself an entire contract upon the completion of which contractor would be entitled to receive payment therefor according to the rates mentioned in the contract, non-performance by one party of his promise with reference to one portion of the contract will not excuse the other of his liabilities under another portion of the contract.

When security is given by a contractor to a company and the amount so deposited as security for the performance by the contractor of his obligations is neither treated by the contract as a penalty nor as liquidated damages but is to be "applied towards satisfaction of any loss or damages which the company may sustain or incur" the company cannot forfeit the amount upon the breach of any of the contractor's obligations but is entitled to recoupe itself for any damages arising from the breach of the contractor who will be entitled to recover the balance, if any, of the amount so deposited. *Narayan Swami v. The Madras Railway Co.* 13 Mad. L. J. 488.

Where a person deposits a certain amount as earnest money for the due performance by him of his part of the contract under which he agrees to pay the other party, a certain sum but breaks the contract thereafter, the other party who becomes entitled to retain the deposit as forfeited under the terms of the contract must, in a suit by him for damages for the breach of contract, give credit for the amount retained as forfeited and can only recover the difference between the actual loss sustained and the amount of the forfeited deposit. *Vellore Taluk Board v. Gopal Sami Naidu*, 38 Mad. 801; *Ockenden v. Henly*, 27 L. J. Q. B. 361 followed; *Subramanian v. Arjuna Perumal*, 37 Ind. Cas. 377.

Cocaine, forwarding of,—Crossing the frontier.—Where the accused forwarded a large consignment of Cocaine from Lucknow to Bombay through railway, and the consignment reached Bombay direct without transshipment and traversed British territory the whole way, it was held that neither the mere fact that cocaine was consigned from Lucknow to Bombay city and conveyed thereto without transshipment at the frontier of the Bombay Presidency, nor the mere fact that the journey from Lucknow to Bombay was throughout through British territory, prevented cocaine from coming within the provisions of the Bombay Abkari Act (V of 1878) as soon as it crossed the frontier. *Emperor v. Tyabally* 8 Bom. L. R. 601.

Condition in cloak room ticket how far binding:—A condition in a cloak room ticket purporting to exempt the Ry. Co. from responsibility for articles above a specified value, deposited in the cloak room except on certain

terms, and assented to by the person taking the ticket, is not prevented from being a part of the contract and from protecting the company merely because it is unreasonable, provided that it be not so extravagant as to imply that that person's assent to it has been obtained by fraud, or so irrelevant as to be foreign to the contract. *Gibaud v. Great Eastern Railway Co.* Div. Ct. (1920) 3 K. B. 689. (1921) 2 K. B. 426 C. A.

Compensation—Whether bars right of action—Action for personal injuries.—(1) In an action for an injury sustained through a railway accident, the plaintiff at the time, not supposing that he had sustained any serious injury, accepted £ 2 as compensation for damages to his cloths; Held that this sum could not be set up as an accord and satisfaction for a patent and severe injury, to the arm or spine. *Roberts v. Eastern Counties Ry.* 1. F. & F. 460.

(2) In cases of railway accident a sum of money is frequently paid and accepted as compensation for the injuries received. It occasionally happens that further unexpected results are experienced which had not been in the contemplation of either party. In an action for injuries arising from a concussion, caused by a collision of railway trains, the plaintiff having the day after the occurrence agreed in terms to accept a sum in satisfaction of the injuries and all consequences arising therefrom:—Held that if his mind went with those terms, and he understood their effect when he assented to them, he was bound by the agreement, and could recover no further compensation, even though it appeared that he had sustained serious and permanent injuries, latent and discovered until some time afterwards of which he had no idea at the time he entered into the agreement. *Rideal v. G. W. Ry.* 1. F. & F. 706. *Ellen v. G. Northern Ry. Co.* (1901) 17 Times L. R. 450 A. C.

(3) A passenger who was injured by railway accident sent in a claim for £ 691 compensation. He accepted £ 400 and gave a receipt acknowledging it to be in full discharge of his claims. A year afterwards he commenced an action against the company for further compensation, to which the company pleaded full satisfaction and discharge of the causes of action. The plaintiff then filed a bill to restrain them from relying on the plea, and from setting up the acceptance of the £ 400 or the receipt, as a satisfaction or discharge of damages, except to the extent of £ 400. This bill did not allege fraud, but that the plaintiff had signed the receipt on the express condition that he should not thereby exclude himself from further compensation if his injuries turned out more serious than was supposed at the time;—Held that accord without full satisfaction does not bar the right of action. *Lee v. L & Y. Ry.* L. R. 6 Ch. 527; 25 L. T. 77; 19 W. R. 729 *Hirschfield v. L. B. & S. C. Ry.* 46 L. J. Q. B. 94; 2 Q. B. D. 1.

(4) It is not a sufficient ground for disturbing a verdict for heavy damages given by a jury for injury sustained in a collision upon a railway, that the p^l's

who had been advised by medical men to abstain entirely from business for a considerable time, did not act upon such advice, but resumed his business shortly after the accident even though the effect might be to render permanent an ailment which otherwise would have been only temporary. *Saunders v. L. & S. W. Ry.* 2 L. T. 153.

(5) In an action for damages against the proprietors of an omnibus, in respect of injuries caused by the negligence of their driver, they pleaded that the plaintiff was awarded and had accepted a sum of money as compensation, by a Magistrate having jurisdiction to award the same. Held, this was a good defence notwithstanding such order was not made on the proprietors but on the driver. *Wright v. London General Omnibus Co.* 46 L. J. Q. B. 429; 2 Q. B. D. 271.

(6) An acceptance in satisfaction must be an act of the will in the party receiving. *Hardman v. Bellhouse* 9 M. & W. 596; 11 L. J. Ex. 135.

(7) In an action for a trespass committed by the servant and by command of A., acceptance of satisfaction by the plaintiff from A., is a good defence. *Thurman v. Wild* 11 A. & E. 453.

Where goods are sold on C. I. F. Terms, the property in them passes to the buyer upon their shipment by the seller and any subsequent damage to them must be borne by the former. Travelling expenses of the seller to the place where a breach of contract occurs to have the goods re-sold under section 107 of the contract act, are too remote and cannot be recovered as damages under section 73 of the contract act. *Karanchi Steam Roller Flour Mills v. Indo Continental Agency* Sind Judicial Commissioner's Court, 38 Ind. Cas. 7.

Damage too remote.—(1) A passenger by railway, travelling with other passengers, was ordered to leave the carriage as on examination of the tickets, one was found short and the passenger was charged by the ticket collector with being the defaulter and on his refusing to pay the fare or leave the carriage he was removed from the carriage by the company's servants without any force. Upon leaving the carriage, he placed a pair of race glasses upon the seat, which as the train proceeded was lost. Held that the passenger could not recover their value. *Glover v. L. & S. W. Ry.* 37 L. J. Q. B. 57; L. R. 3 Q. B. 25.

(2) Loss of professional income arising from injuries received in a railway accident is too remote. *Phillips v. L. & S. W. Ry.* 5 Q. B. D. 78.

(3) The negligence of a railway company caused such an injury to a passenger that he became insane and by reason of insanity he committed suicide; the injury was not regarded as the approximate cause of the death and the company was held not liable for his death. *Scheffer v. W. & C. Ry.* L. T. August 1882.

(4) Where plaintiff's husband, a platelayer in the Company's service, died from injuries, received in a train he was travelling while in the deft's service, the

accident being occasioned by the negligence of fellow servants of the company, it was held that the company was not liable. *Turner v. S. P. & D. Ry.* 1. A. L. J. R. 653.

(5) A who was in the employ of a railway company, his duty being to attach carriage to engine, was thrown under the carriage and injured. There was evidence that the company's staff for the performance of this work was not sufficient. Held that the Company was not liable. *Skipp v. Eastern Counties Ry.* 9 Ex. 223.

(6) A man went with a cart and team, by implied invitation to fetch lime from a railway yard and he unharnessed a mare that was leading his team. A passing train frightened the mare. She hacked considerable distance and fell over a wall of the company and was hurt. Held company not liable. *M. S. & L. Ry. v. Woodcock* 25 L. T. 333.

Deposits-foreiture of—Neither S. 74 of the Indian Contract Act, nor the principles of law laid down in decisions dealing with *promises to pay specified sums* in case of breach of contract apply to cases of foreiture of deposits for breach of stipulations even when some of them are but trifling while others are not such. *Wallis v. Smith* L. R. 21 Ch. D. 243 at p. 258. In such cases the rule is that where the instrument refers to a sum deposited as security for performance, the forfeiture will not be interfered with, if reasonable in amount. *Manian Patter v. The Madras Ry. Co.* 29 Mad. 118. (*Srinivasa v. Rathnasabapathi* 16 Mad. 474 not followed).

Excavation liability of company, when:—When an owner of land makes upon it an excavation adjoining a public way so that a person walking upon it might, by making a false step, or being affected with a sudden giddiness, or by the sudden starting of a horse, be thrown into the excavation, the party making the excavation is liable for the consequences; but it is otherwise when the excavation is made at some distance from the way, and the person falling into it would be a trespasser upon the land of the party making the excavation before he reached it. *Hardcastle v. S. Y. Ry.* 4 H. & N. 67.

The proper and true test of legal liability in such a case is, whether the excavation is substantially adjoining the way. (*Ibid*).

A company was possessed of a canal and the land between it and a sluice, an ancient public footpath passed through the land close to the sluice; there was a towing-path and an intervening space between the towing-path and the foot-path. By permission of the company the intervening space had been recently used for carting, and ruts having been caused the whole space between the sluice and the canal had been covered with cinders and the path was not distinguishable. A person using the path at night missed his way and fell into the canal and was drowned. Held that the canal was not so near the footpath as to throw upon the company the duty of fencing the canal off; and the company was not liable for the accident. *Binks v. S. Y. Ry.* 3 B. & S. 244, 350.

Fellow servants who are common employment:—All persons engaged under the same employer for the purposes of the same business, however different in detail those purposes may be, are fellow servants in a common employment e.g. a carpenter doing work on the roof of an engine-shed and porters moving an engine on a turn-table. *Morgan v. Vale of North Ry. Co.* L. R. 1 Q. B. 142. A railway guard and a "gauger" of platelayers in the service of the same company. *Waller v. S. E. Ry.* 2 H. & C. 102; a chief engineer and one ordinary seaman employed by the same company. *Searle v. Lindson* 11 C. B. 429. A Traffic Manager and a milesman of a railway company *Conway v. B. & N. C. Ry.* 11 Ir. C. L. R. 345. The master of a ship and the sailors employed by the same company. *Hedley v. The Pinkney & Sons Steamship Co.* 1894 A. C. 222. A labourer employed in loading trucks and a deputy foreman. *Lovegrove v. L. B. & S. C. Ry.* (1864) 16 Q. B. N. S. 669. A manager of a barge and a labourer employed in lowering sacks. *Lowell v. Howell* (1876) 1 C. P. D. 161. Servants on two trains on the same line. *Hutchinson v. York Ry. Co.* 5 Ex. 343. Servants on a train and those working on the line as pointsmen. *Waller v. S. E. Ry.* *Supra*, a labourer employed by a railway company assisting in loading a pick up train and the guard in charge thereof. *Turney v. Midland Ry.* L. R. 1 C. P. 291.

A master is not responsible for an injury occasioned to a servant through the negligence of a fellow servant. *Searle v. Lindsey* 11 C. B. (N. S.) 429. *Griffiths v. Gidlow* 3 H. & N. 648. *Smith v. Howard* 22 L. T. 130. *Allen v. New Gas Co.* 45 L. J. Ex. 668. *Elizabeth C. Blanchette v. Secy. of State* 9 All L. J. 173.

Not fellow servants:—Where one railway company uses the station of another company, the servants of the two companies at the station, *Warburton v. G. W. Ry.* L. R. 2 Ex. 30. *Swanson v. N. E. Ry.* 3 Ex. 341; 47 L. J. Ex. 372. A labourer employed by a contractor to unload trucks and the shunter of a railway company. *Turner v. G. E. Ry.* 33 L. T. 431. A platelayer travelling in the train and the driver or workmen thereof are not fellow servants. *Turner v. S. P. & D. Ry.* 1 All L. J. R. 653.

Injury by fellow servants—common interest—liability of company-volunteers:—(1) The rule of law, that a master is not in general responsible to his servant for an injury occasioned by the negligence of a fellow-servant, in the course of their common employment, applies to the case of a person who is injured whilst voluntarily assisting the servants in that work. Therefore, where the servants of a railway company were turning a truck on a turn-table, and a person not in the employment of the company volunteered to assist them, and while so engaged, other servants of the company negligently propelled a steam-engine, and thereby caused the death of the person who so volunteered. Held that the company was not liable; a volunteer can have no greater rights than a hired servant. *Degg v. Midland Ry.* 1 H. & N. 773.

(2) Where the plaintiff's husband a platelayer in the Company's services died from injuries received in a train he was travelling in, while in the defendant's service, the accident being occasioned by the negligence of fellow servants of the company; it was held that the company was not liable as there was no failure on their part to provide competent workmen and fit tackle and machinery. *Turner v. S. P. & D. Ry.* (1875) 1 A. L. J. R. 653.

Restriction on supply of railway wagons—contract impossible of performance:—Where parties were fully aware of the restriction imposed by the Government on the supply of railway waggons on account of the war, and a contract was entered into for the sale of goods and delivery thereof in the manner stipulated in the contract on the assumption that by the time the goods would become deliverable under the contract the said restriction would be removed, Held that the contract was void being impossible of performance and the buyer was not entitled to recover any compensation from the seller who was excused from the performance of the contract. *Kunjilal v. Durgaprasad* 24 Cal. W. N. 703.

Contract by servant with master to do dangerous work:—A railway company agreed with a contractor that he should shunt their trucks upon their line and should supply horses and men for that purpose, the company to provide boys to assist in the shunting. For several years the plaintiff as the servant of the contractor shunted trucks on the company's line, sometimes with and sometimes without boys. On one occasion the plaintiff had to shunt trucks alone and was injured by a truck running over him. In an action by him against the company,—held, that there was no negligence or breach of duty on the part of the company and that the plaintiff had no cause of action. *Membery v. G. W. Ry.* 58 L. J. Q. B. 563.

Fence, defective—frightening of cattle by trucks:—Beasts were being driven along an occupation road to the fields; they were crossing the level siding of the railway, when some trucks were sent down the line negligently which frightened the cattle. The drovers recovered some of them, but the others went along the road, got into a garden through a defect in the fence and so on to the line, where they were run over by a train & killed. Blackburn J., in holding the company liable said, that so long as the want of control over the cattle remained without any fault of the owner, the *Causa proxima* was that which caused the escape, for the consequences of which he who caused it was responsible. *Sneeshy v. L. & Y. Ry. Co.* L. R. 9 Q. B. 263.

Joint parties—owners:—If A & B. are separately owners of several articles contained in a box delivered by them to a railway company to carry for them jointly, they may jointly sue the company for the loss of goods, though the box is directed to one of them only, and the price of the carriage is paid by that one only. *Metcalf v. L. B. & S. C. Ry.* 4 C. B. (N. S.) 318.

Knowledge of danger—no liability of the company:—A railway company employed a contractor to do work upon a side wall of a dark tunnel at a p

where the line was on a curve, so that workmen could not see a train approaching till it was within 20 or 30 yards of them. The space between the rail and the wall was just sufficient for a workman to keep clear of a train if sensible of its approach. Trains passed the spot every 10 minutes and the noise would prevent a workman from hearing the approach of a train. No one was stationed to give notice of an approaching train nor was the speed slackened on the spot nor was any signal given by whistling or otherwise. There was no light at the spot in question. The plaintiff was a workman in the service of the contractor and had been working at the spot for a fortnight when he was struck by a train. Held that the plaintiff, having continued the work, with full knowledge of its dangerous nature, had no remedy against the company. *Woodley v. Metro Ry.* 46 L. J. Ex. 521. *Church v. Appleby* 38 L. J. Q. B. 144—*Contra—Thruswell v. Handyside* 57 L. J. Q. B. 347; 20 Q.B.D. 359.

Liability of forwarding agents:—A forwarding agent who has undertaken for reward to forward goods from one place to another and has made the usual and proper arrangements for their carriage is not liable if the goods are lost while in the custody of the customs authorities of the place to which they were being sent. *Jones v. European & General Express Co.* (1920). 25 Com. Cas. 296.

Liability of Company-injury on a platform allotted to another company's traffic:—The plaintiff was injured at a station belonging to the defendants by the negligence of a porter employed on a platform which was exclusively allotted to D company's traffic. Held, that the porter was acting as the defendant's servant, and that therefore the defendants were liable. *Self v. L. B. & S. C. Ry.* 42 L. J. 173.

Liability of proprietor-conductor acting without due care:—A passenger, by an omnibus, while being forcibly removed from it by a conductor in charge, was thrown on the ground and seriously injured. The proprietor of the omnibus, on being applied to for compensation, stated that the passenger was drunk and had refused to pay his fare. On cross-examination he did not deny that he had been drinking—Held that if the conductor intended to put him safely out of the omnibus there was evidence that in so doing he was executing the commands of the proprietor, his master; and that if the injury was caused by the conductor acting without due care in executing such command, the proprietor was responsible, *Seymour v. Greenwood*, 6 H & N. 359; 30 L. J. Ex. 189. *Butler v. M. S. & L. Ry.* 21 Q. B. 207.

Management of points and signals:—A person whose duty it is to oil, clean, and adjust points and signal wires, and apparatus is not a person who can be said to have the management of points and signals. *Gibbs v. G. W. Ry.* 12 Q. B. D. 208.

Medical assistance-rights and liabilities of master & servants,—(1)

A servant of railway company was injured by an accident on the railway. The general manager of the company engaged a medical man to attend upon, not having any express authority from the company to do so. Held, in an action against the company by the medical man to recover for his services that the General Manager had an implied authority to engage him, and the company was therefore liable. *Walker v. G. W. Ry.* 36 L. J. Ex. 123.

(2) An accident occurred to a passenger on the line in consequence of the negligence of one of company's servants. Held that neither the engine-driver, the railway guard, Station Master nor the Superintendent of the traffic department had implied authority to make contracts obligatory on the company with medical men called in to assist the injured person. But such an authority might be inferred from the conduct of the directors of the company on former occasions in recognising similar contracts. *Cox v. Midland Counties Ry.* 3 Ex. 268; 18 L. J. Ex. 65.

(3) A sub-Inspector of Railway police has been held entitled to pledge the credit of a railway company for board, lodging, necessities and goods supplied to injured persons. *Laugan v. G. W. Ry.* 30 L. T. 173.

(4) A master is liable for all the acts of his servant within the scope of his authority, whatever may be the extent to which the servant, acting as such, may abuse that authority. *Bayley v. M. S. & L. Ry.* 42 L. J. C. P. 78.

Master and Servant:—If there be any circumstance in existence at the time of the dismissal of the servant which would justify the master in discharging him, it is immaterial whether it was alleged by the master or even known to him, at the time. If an action for wrongful dismissal he afterwards brought against him he may justify the dismissal by proof of any facts that would have supported it at the time. *Baillie v. Kell* 4 Bing. N. C. 638. If a servant who is rightfully discharged refuses to quit his masters premises, his master would be perfectly justified in driving him out by force. *Donaldson v. Williams* 1 Cr. & M. 345. *Collison v. Warren* (1901) 1 Ch. D. (812). *Mackay v. Ford*, 5 H. & N. 792.

Wrongful dismissal—venial faults not sufficient:—In order to justify the dismissal of a servant on the ground of misconduct, mere venial faults are not sufficient, but that there must be something gross in the acts or duties committed or omitted to warrant a summary dismissal. *Han v. The Eastern Bengal Ry. Co.* Hyde's Reports Vol II p. 228.

If a servant of a company does not discharge his duty faithfully and is guilty of such misconduct as would be fatal to good order in the establishment and that misconduct is proved the court must look to that misconduct and give its decision accordingly. No servant is bound to do an unlawful command and is justified in disobeying it; but if the order be lawful, the servant must obey, or leave the establishment and take the consequences. *Reid v. Scott Thompson & Co. Ltd.* Hydes Reports Vol. II p. 173.

MESSAGES.

Message-erroneous transmission of.—In an action for negligence brought against the company by a person to whom a telegram had been erroneously despatched, it was held that the action would not be on the ground that the obligation of the company to use due care and skill in the transmission of a message arose entirely out of contract, and that the vendor of goods who received an offer by telegraph from the vendee could not maintain an action against the company for a mistake in the message. *Playford v. U. K. E. T. Coy.* 10 B. & S. 759; 38 L. J. Q. B. 249, *M^r Andrew v. E. T. Coy.* 17 C. B. 3; 25 L. J. C. P. 24. The sender of the message is not liable to the receiver of it for loss arising from a mistake made by the telegraph clerk in the transmission of the message. *Hend v. Pope* 40 L. J. Ex. 15.

A telegraph company through the negligence of their agent misdelivered a telegraphic message to the plaintiffs. The message purported to be from the plaintiff's Liverpool house, and to be a larger order for barley; but in fact it was not from the Liverpool house, nor intended for the plaintiffs. The plaintiffs executed the supposed order, and having suffered a heavy loss in consequence claimed damages against the company. Held that they were not entitled to maintain their action, as there was no contract between themselves and the company, nor any duty upon the company to transmit messages correctly. *Dix v. Reuter Telegraph Co.* 3 C. P. D. 1.

Misdelivery of Telegram.—No action will lie against a telegraph company at the suit of the receiver for the misdelivery of a telegram, unless there is either a contract between him and the company or (possibly) fraud on their part in the transmission of it. *Dixon v. Reuters' Telegraph Company* 47 L. J. C. P. 1; 3 C. P. D. 1.

Who can maintain an action for mistake in message.—The receiver of a telegram cannot maintain an action for a mistake which has caused him damage. The person who pays for the transmission of a message is the only person who has a right of action in case he is damaged by the negligence of the company or its servants. *Playford v. U. K. E. T. Co.* Supra.

Action for non-delivery.—The plaintiff entrusted the defendant with a message in cypher, which was unintelligible to the defendant for transmission to America. The defendant negligently omitted to send message. The consequence was that the plaintiff lost a sum of money which he would have earned for commission upon an order to which the message related. Held that the plaintiff could not recover such sum of money from the deft, but only nominal damages. *Sanders v. Stuart* 45 L. J. C. P. 682; 1 C. P. D. 326. Telegraph companies may limit their responsibility by special conditions.

Sending defamatory telegram.—A railway company was held liable for transmitting a telegram to the effect that the plaintiff's bank had stopped payment. *Whitefield v. S. E. Ry.* (1158) 27 L. J. Q. B. 229.

in a dangerous condition: there was a second bridge at another point of the platform. At the place through which the deceased fell there was a descent of eight or ten steps, between which and the hand rail at the side there was an opening of about seven feet by four without any protection. The bridge had been in use for ten years; the accident happened on a moonlight night, but was the first that had ever happened although thousands of people (including the plaintiff) had used the bridge before. The company was held liable, *Longmore v. G. W. Ry.* 19 C. B. N. S. 183.

No liability of company for acts of persons not under their control.—(1) A railway porter wheeled a barrow with luggage thereon to a side entrance to the defendants' station and left it stationary close to the top of some steps leading down to the public foot-path outside; some licensed porters, not employed by or subject to the control of the defendants, rushed up the steps and in a struggle for the luggage upset the barrow of trunks. These tumbled down the steps and injured the plaintiff, a passenger, who was waiting on the foot-path for his luggage to be brought out. Held that the plaintiff was not entitled to recover. *Murphy v. G. N. Ry.* (1897) 2 Ir. R. 301.

(2) Where work is done for a company under a contract (parol or otherwise), the company is not responsible for injury resulting to a third person from negligently doing the work, though the company employ their own surveyor to superintend it and to direct what shall be done. *Steel v. S. E. Ry.* 16 C. B. 550.

Rushing in front of train:—The plaintiff saw a boy standing on a track in imminent danger from an approaching train, which had failed to give the statutory signals. To rescue the boy, the deceased rushed upon the tracks immediately in front of the moving train, and in that act was killed. Held, that the deceased was not guilty of contributory negligence, since a dangerous situation had been created by the negligent operation of the train, and the deceased was justified in making effort to save the boy, provided that he acted with such care as a prudent person would have shewn in such emergency. The law has so high a regard for human life that it will not impute negligence to an effort to preserve it, unless the exposure is clearly rash and reckless. *Ridley v. Mobile & Ry. Co.* (1905) 86 S. W. Rep. 606—*Pennsylvania Ry. Co. v. Roney.* (1883) 89 Ind. 453.

Too many Passengers:—Proof that at the time of the accident there were more passengers than the statute allows, is conclusive evidence of negligence. *Israel v. Clarke* 4 Esp. 259.

Onus:—A goods train and a passenger train crossed each other on a double line of railway. Timber loaded in a truck of a goods train projected and struck the passenger train injuring a passenger. Held, that it was for the passenger to show that the accident was caused by the negligence of the company and that the company was not bound to show how the accident happened. *Hanson v. L. & Y. Ry.* 20. W. R. 297.

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